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Contents

Federal Register
Vol. 68, No. 27
Monday, February 10, 2003

Agricultural Marketing Service
NOTICES
Agency information collection activities:
Proposed collection; comment request, 6708

Agriculture Department
See Agricultural Marketing Service
See Animal and Plant Health Inspection Service
See Forest Service
See Natural Resources Conservation Service

Animal and Plant Health Inspection Service
RULES
Noxious weeds:
Witchweed; regulated areas, 6603–6605
PROPOSED RULES
Exportation and importation of animals and animal products:
Foot-and-mouth disease; disease status change—Uruguay, 6673–6677
Noxious weeds:
Kikuyu grass cultivars, 6653–6655
NOTICES
Meetings:
Veterinary biological products, 6708–6709

Army Department
See Engineers Corps
NOTICES
Meetings:
Armament Retooling and Manufacturing Support Executive Advisory Committee, 6723–6724
Army Education Advisory Committee, 6724
U.S. Military Academy, Board of Visitors, 6724
Patent licenses; non-exclusive, exclusive, or partially exclusive:
Method for treating, preventing, or inhibiting enterotoxigenic escherichia coli infections with bovine erythrocyte preparations, 6724–6725
Protective garment, 6725
Senior Executive Service:
Performance Review Board; membership, 6725

Centers for Disease Control and Prevention
NOTICES
Agency information collection activities:
Proposed collection; comment request, 6750

Centers for Medicare & Medicaid Services
RULES
Medicare:
Hospital outpatient prospective payment system (2003 CY); correction, 6636–6644
PROPOSED RULES
Medicare:
End-stage renal disease services; provider bad debt payment, 6682–6687
NOTICES
Committees; establishment, renewal, termination, etc.:
Medicare Education Advisory Panel; meeting, 6750–6751

Coast Guard
RULES
Drawbridge operations:
South Carolina, 6621

Commerce Department
See International Trade Administration
See National Institute of Standards and Technology

Copyright Office, Library of Congress
PROPOSED RULES
Copyright office and procedures:
Prohibition to circumvention of copyright protection systems for access control technologies; exemption, 6678–6679

Defense Department
See Army Department
See Engineers Corps
RULES
Civilian health and medical program of uniformed services (CHAMPUS):
TRICARE program—
Double coverage; third-party recoveries, 6617–6621

Education Department
NOTICES
Special education and rehabilitative services:
Individuals with Disabilities Education Act (IDEA)—
Correspondence; quarterly list, 6725–6727

Employment and Training Administration
NOTICES
NAFTA transitional adjustment assistance:
Bristol Bay Native Association, 6775–6783

Energy Department
See Federal Energy Regulatory Commission

Engineers Corps
NOTICES
Meetings:
Estuary Habitat Restoration Council, 6725

Environmental Protection Agency
RULES
Air pollutants, hazardous; national emission standards:
Generic maximum achievable control technology—
Process wastewater definition; CFR correction, 6635–6636
Air programs; approval and promulgation; State plans for designated facilities and pollutants:
New Hampshire, 6630–6635
Air quality implementation plans; approval and promulgation; various States:
Kentucky, 6629–6630
West Virginia, 6627–6629
PROPOSED RULES
Air programs; approval and promulgation; State plans for designated facilities and pollutants:
New Hampshire, 6681–6682

Air quality implementation plans; approval and promulgation; various States:
West Virginia, 6681
NOTICES
Grants and cooperative agreements; availability, etc.:
Environmental Professional Intern Program, 6739–6744

Federal Aviation Administration
RULES
Airports:
Airport noise compatibility planning; CFR correction, 6608
Class D and Class E airspace, 6606–6607
Class E5 airspace, 6607–6608
PROPOSED RULES
Air traffic operating and flight rules, etc.:
Enhanced flight vision systems, 6801–6813
Class D and Class E airspace, 6677–6678
NOTICES
Aeronautical land-use assurance; waivers:
City-County Airport, Madras, OR, 6789–6790
Passenger facility charges; applications, etc.:
Kalamazoo/Battle Creek International Airport, MI, 6790
Reports and guidance documents; availability, etc.:
Rotor Manufacturing Induced Anomaly Database (ROMAN); voluntarily submitted information protected from disclosure, 6790–6792
Transport category airplanes—
Strengthened flight deck doors; certification, 6793

Federal Communications Commission
RULES
Common carrier services:
Federal-State Joint Board on Universal Service—
Non-rural local exchange carriers; high-cost support; forward looking mechanism; Delphi version, 6646–6648
PROPOSED RULES
Common carrier services:
International Settlements Policy reform and international settlement rates, 6689
Radio services, special:
Private land mobile radio services—
Public safety communications improvements in 800 MHz band, etc.; extension of comment period, 6688–6689
Public safety communications in the 800 MHz band, etc.; supplemental comments, 6687–6688
NOTICES
Common carrier services:
Federal-State Joint Board on Universal Service—
Wireline Competition Bureau; non-rural carriers; high-cost support mechanism; line count input values update, 6744–6745

Federal Emergency Management Agency
RULES
Flood elevation determinations:
Various States, 6644–6646
NOTICES
Reports and guidance documents; availability, etc.:
Portable (hand-held) radiological instruments; use, 6745–6746

Federal Energy Regulatory Commission
RULES
Organization, functions, and authority delegations:
Chief Administrative Law Judge, 6608–6609
NOTICES
Electric rate and corporate regulation filings:
AES Corp. et al., 6733–6736
Hydroelectric applications, 6736–6738
Meetings:
Hydroelectric licensing regulations; stakeholder workshops and post-workshop stakeholder drafting session, 6738–6739
Practice and procedure:
Off-the-record communications, 6739
Applications, hearings, determinations, etc.:
ANR Pipeline Co., 6727
CenterPoint Energy Gas Transmission Co., 6727–6728
Dominion Transmission, Inc., 6728
Gulf South Pipeline Co., LP, 6728–6729
Kinder Morgan Interstate Gas Transmission LLC, 6729
National Fuel Gas Supply Corp., 6729–6730
Overthrust Pipeline Co., 6730
Paiute Pipeline Co., 6730
PG&E Gas Transmission, Northwest Corp., 6730–6731
Red Lake Gas Storage, L.P., 6731
Renaissance Power, L.L.C., 6731
USG Pipeline Co., 6731–6732
Williston Basin Interstate Pipeline Co., 6732

Federal Highway Administration
NOTICES
Environmental statements; availability, etc.:
Lewis & Clark and Jefferson Counties, MT, 6793–6794

Federal Reserve System
NOTICES
Banks and bank holding companies:
Change in bank control, 6746
Formations, acquisitions, and mergers, 6746
Federal Open Market Committee:
Domestic policy directives, 6746–6747

Federal Trade Commission
NOTICES
Meetings:
Spam e-mail; public forum, 6747–6748
Prohibited trade practices:
Lentek International, Inc., et al., 6748–6750

Fish and Wildlife Service
PROPOSED RULES
Migratory bird hunting:
Alaska; spring/summer migratory bird subsistence harvest, 6697–6707
NOTICES
Environmental statements; availability, etc.:
Incidental take permits—
Denver (City and County), CO; Preble's meadow jumping mouse, 6756–6757

Food and Drug Administration
RULES
Nonclinical laboratory studies; good laboratory practice:
Conforming regulations regarding removal of Section 507 of Federal Food, Drug, and Cosmetic Act; CFR correction, 6609
NOTICES
Agency information collection activities:
Proposed collection; comment request, 6752–6754

Forest Service
NOTICES
Environmental statements; notice of intent:
Oregon; Port-Oxford-cedar management, 6709–6710
Meetings:
Resource Advisory Committees—
Lassen County, 6710

Health and Human Services Department
See Centers for Disease Control and Prevention
See Centers for Medicare & Medicaid Services
See Food and Drug Administration

Housing and Urban Development Department
NOTICES
Agency information collection activities:
Proposed collection; comment request, 6754
Submission for OMB review; comment request, 6754–6755
Environmental statements; notice of intent:
King County, WA; Park Lake Homes, 6755–6756

Immigration and Naturalization Service
NOTICES
Agency information collection activities:
Proposed collection; comment request, 6773–6774
Submission for OMB review; comment request, 6774–6775

Interior Department
See Fish and Wildlife Service
See Land Management Bureau

Internal Revenue Service
NOTICES
Agency information collection activities:
Proposed collection; comment request, 6796–6799

International Trade Administration
NOTICES
Antidumping:
Bulk aspirin from—
China, 6710–6712
Persulfates from—
China, 6712–6713
Stainless steel sheet and strip in coils from—
Germany, 6716–6719
Italy, 6719–6722
Korea, 6713–6716

International Trade Commission
NOTICES
Import investigations:
Agricultural tractors, lawn tractors, riding lawnmowers, and components, 6772–6773

Justice Department
See Immigration and Naturalization Service
NOTICES
Privacy Act:
Systems of records; correction, 6800

Labor Department
See Employment and Training Administration
See Mine Safety and Health Administration
See Occupational Safety and Health Administration

Land Management Bureau
NOTICES
Agency information collection activities:
Proposed collection; comment request, 6757–6761
Environmental statements; notice of intent:
Oregon; Port-Oxford-cedar management, 6709–6710
Timber Mountain/John's Peak Off-Highway Vehicle Area, OR, 6762–6763
Realty actions; sales, leases, etc.:
Nevada, 6763–6765
Utah, 6765–6766
Recreation management restrictions, etc.:
Sand Mountain and Walker Lake Recreation Areas, NV; supplemental rules, 6766–6769
Resource management plans, etc.:
Elko Resource Area, NV; wild horse management, 6769–6770
Ely District, NV, 6770–6771
Gunnison Resource Area, CO, 6761–6762
Withdrawal and reservation of lands:
Nevada, 6771–6772

Library of Congress
See Copyright Office, Library of Congress

Maritime Administration
NOTICES
Agency information collection activities:
Reporting and recordkeeping requirements, 6794

Mine Safety and Health Administration
RULES
Civil penalties; inflation adjustment; assessment criteria and procedures, 6609–6613

National Institute of Standards and Technology
NOTICES
Voluntary product standards:
Wood-based structural-use panels; performance standard, 6722–6723

Natural Resources Conservation Service
PROPOSED RULES
Loan and purchase programs:
Environmental Quality Incentives Program, 6655–6673

Nuclear Regulatory Commission
NOTICES
Agency information collection activities:
Proposed collection; comment request, 6783–6784
Environmental statements; availability, etc.:
Maine Yankee Atomic Power Co., 6784–6786
Applications, hearings, determinations, etc.:
Arizona Public Service Co., 6784
Hydro Resources, Inc., 6786

Occupational Safety and Health Administration
NOTICES
Meetings:
Federal sector recordkeeping requirements, 6783

Personnel Management Office
PROPOSED RULES
Health benefits, Federal employees:
Health care providers; financial sanctions, 6649–6653

Public Health Service
See Centers for Disease Control and Prevention

See Food and Drug Administration

Research and Special Programs Administration
PROPOSED RULES
Hazardous materials:
Hazardous materials transportation—
Cargo tank motor vehicles transporting flammable liquids; external product piping; safety requirements, 6689–6694

Securities and Exchange Commission
NOTICES
Investment Company Act of 1940:
Exemption applications—
Van Kempen Investment Advisory Corp. et al., 6786–6788
Meetings; Sunshine Act, 6788–6789
Securities:
Suspension of trading—
Biochemical Industries, Inc., 6789

Small Business Administration
NOTICES
Grants and cooperative agreements; availability, etc.:
Women's Business Centers; financial counseling and other technical assistance, 6789

State Department
RULES
International Traffic in Arms regulations:
Defense articles export licenses; authority citation revised; CFR correction, 6609

Surface Transportation Board
PROPOSED RULES
Railroad consolidations, mergers, and acquisitions of control:
Temporary trackage rights exemption, 6695–6697
NOTICES
Meetings:
Rail rate challenges; procedures to expedite resolution to be considered under Stand-Alone Cost methodology; hearing, 6794–6795
Rail carriers:
Railroad consolidation procedures; temporary trackage rights exemption, 6795
Railroad operation, acquisition, construction, etc.:
Illinois Central Railroad Co., 6795–6796

Thrift Supervision Office
NOTICES
Agency information collection activities:
Proposed collection; comment request; correction, 6800

Transportation Department
See Coast Guard
See Federal Aviation Administration
See Federal Highway Administration
See Maritime Administration
See Research and Special Programs Administration
See Surface Transportation Board

Treasury Department
See Internal Revenue Service
See Thrift Supervision Office
RULES
Currency and foreign transactions; financial reporting and recordkeeping requirements:
Bank Secrecy Act; implementation—
Currency dealers and exchangers; suspicious transactions reporting requirements, 6613–6617

Veterans Affairs Department
RULES
Board of Veterans Appeals:
Appeals regulations and rules of practice—
Veterans law judges; new title for Board members, 6621–6625
Loan guaranty:
Veterans Education and Benefits Expansion Act; implementation, 6625–6627
PROPOSED RULES
Adjudication; pensions, compensation, dependency, etc.:
Cirrhosis of liver in former prisoners of war; presumptive service connection, 6679–6680

Separate Parts In This Issue

Part II
Transportation Department, Federal Aviation Administration, 6801–6813

Reader Aids
Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

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CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

5 CFR
Proposed Rules:
890....................................6649

7 CFR
301....................................6603
Proposed Rules:
360....................................6653
1466..................................6655

9 CFR
Proposed Rules:
94......................................6673

14 CFR
71 (2 documents) 6606, 6607
150....................................6608
Proposed Rules:
1..6802
71......................................6677
91......................................6802
121....................................6802
125....................................6802
135....................................6802

18 CFR
375....................................6608

21 CFR
58......................................6609

22 CFR
123....................................6609

30 CFR
100....................................6609

31 CFR
103....................................6613

32 CFR
199....................................6617

33 CFR
117....................................6621

37 CFR
Proposed Rules:
201....................................6678

38 CFR
19......................................6621
36......................................6625
Proposed Rules:
3..6679

40 CFR
52 (3 documents) 6627, 6629
62 (2 documents) 6630, 6633
63......................................6635
Proposed Rules:
52......................................6681
62 (2 documents) 6681, 6682

42 CFR
405....................................6636
419....................................6636
Proposed Rules:
413....................................6682

44 CFR
65......................................6644

47 CFR
54......................................6646
Proposed Rules:
0..6689
43......................................6689
63......................................6689
64......................................6689
90 (2 documents) 6687, 6688

49 CFR
Proposed Rules:
173....................................6689
1180..................................6695

50 CFR
Proposed Rules:
20......................................6697
21......................................6697
92......................................6697

Rules and Regulations

Federal Register
Vol. 68, No. 27
Monday, February 10, 2003

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 02–042–1]

Witchweed; Regulated Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the witchweed quarantine and regulations by adding and removing areas in North Carolina and South Carolina from the list of regulated areas. These changes affect five counties in North Carolina and two counties in South Carolina. These actions are necessary in order to prevent the artificial spread of witchweed from areas where the weed has been detected and to remove restrictions that are no longer necessary on the interstate movement of regulated articles from areas where witchweed has been eradicated.

DATES: This interim rule was effective February 4, 2003. We will consider all comments that we receive on or before April 11, 2003.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/ commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 02–042–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 02–042–1. If you use e-mail, address your comment to *regulations@aphis.usda.gov.* Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and ''Docket No. 02–042–1'' on the subject line.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html.*

FOR FURTHER INFORMATION CONTACT: Dr. Alan V. Tasker, National Weed Program Coordinator, Invasive Species and Pest Management, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236; (301) 734–5225.

SUPPLEMENTARY INFORMATION:

Background

Witchweed (*Striga* spp.) is a parasitic plant that feeds off the roots of its host, causing degeneration of corn, sorghum, and other grassy crops. Within the United States, witchweed is only found in parts of North Carolina and South Carolina.

The witchweed quarantine and regulations, contained in 7 CFR 301.80 through 301.80–10 (referred to below as the regulations), quarantine the States of North Carolina and South Carolina and restrict the interstate movement of certain articles from regulated areas in those States for the purpose of preventing the spread of witchweed.

Section 301.80–2(a) provides that the Deputy Administrator will designate as regulated areas each quarantined State, or each portion of a quarantined State, in which witchweed has been found, in which there is reason to believe that witchweed is present, or that it is deemed necessary to regulate because of its proximity to infestation or its inseparability for quarantine enforcement purposes from infested localities. The regulations impose restrictions on the interstate movement of regulated articles from the regulated areas. Regulated areas, which are listed in § 301.80–2a, are designated as either suppressive areas or generally infested areas. Suppressive areas are those portions of the regulated areas where eradication of infestation is undertaken as an objective. Currently, all the regulated areas listed in § 301.80–2a are designated as suppressive areas.

Less than an entire quarantined State will be designated as a regulated area only if the Deputy Administrator is of the opinion that: (1) The State has adopted and is enforcing restrictions on the intrastate movement of the regulated articles that are substantially the same as those imposed on the interstate movement of regulated articles and (2) the designation of less than the entire State as a regulated area will prevent the interstate spread of witchweed.

Changes to the List of Regulated Areas

In this interim rule, we are amending the list of regulated areas in § 301.80–2a by removing areas in Bladen, Columbus, Cumberland, Pender, and Robeson Counties, NC, and Dillon, Horry, and Marion Counties, SC, from the list of suppressive areas. The areas we are removing from Columbus County, NC, and Dillon County, SC, were the only suppressive areas in those counties; therefore, we have removed the entries for Columbus County, NC, and Dillon County, SC, from the list of regulated areas.

We are taking this action because we have determined that witchweed no longer occurs in these areas; therefore, we no longer need to list these areas as suppressive areas for the purpose of preventing the spread of witchweed. This action relieves restrictions on the movement of regulated articles from these areas that are no longer necessary.

In addition to removing areas from the list of regulated areas in § 301.80–2a, we are also adding several areas to that list. Specifically, we are adding 6 farms in Robeson County, NC, 11 farms in Horry County, SC, and 6 farms in Marion County, SC, as suppressive areas. We are taking this action because we have determined that witchweed occurs in these areas; therefore, we need to list these areas as suppressive areas for the purpose of preventing the artificial spread of witchweed. As a result of this action, the restrictions described in § 301.80–3 of the regulations on the interstate movement of regulated articles from suppressive areas will apply to the movement of regulated articles from the 6 farms in North

Carolina and the 17 farms in South Carolina that we are designating as suppressive areas. The entire regulated area is described in the rule portion of this document.

Immediate Action

Immediate action is necessary to update the list of areas in order to: (1) Relieve restrictions on the interstate movement of regulated articles from areas that are no longer infested with witchweed, and (2) prevent the spread of witchweed from newly infested areas into uninfested areas. Under these circumstances, the Administrator has determined that prior notice and opportunity for public comment are contrary to the public interest and that there is good cause under 5 U.S.C. 553 for making this action effective less than 30 days after publication in the **Federal Register**.

We will consider comments we receive during the comment period for this interim rule (*see* **DATES** above). After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

We are amending the witchweed quarantine and regulations by adding and removing areas in North Carolina and South Carolina from the list of regulated areas. These changes affect five counties in North Carolina and two counties in South Carolina. These actions are necessary in order to prevent the artificial spread of witchweed from areas where the weed has been detected and to remove restrictions that are no longer necessary on the interstate movement of regulated articles from areas where witchweed has been eradicated.

Preventing the spread of witchweed has been an important goal for decades. Since 1951, witchweed has been found in a total of 38 counties in North Carolina and South Carolina, but currently, only portions of 8 counties are listed as suppressive areas. No areas are listed as generally infested. Witchweed affects U.S. corn, sorghum, and sugar cane producers. During 1999–2001, the average annual value of those crops was $201.5 million in North Carolina and South Carolina. If allowed to spread throughout the United States, witchweed could cost an estimated $1 billion in annual control costs in addition to an estimated 10 percent loss in yields for U.S. corn producers alone. U.S. sorghum and sugar cane producers would likewise bear additional costs. Using these figures, preventing the further spread of witchweed prevents an estimated $36.49 million in costs for North Carolina and South Carolina and an estimated $3.45 billion in costs for the entire United States.

In comparison, the costs of controlling witchweed are relatively low. Estimates for costs in 2002 are $1.32 million. Control activities include the use of herbicides to kill witchweed and its hosts. Producers with active witchweed infestations receive free herbicide applications, which provide the added benefit of controlling other weeds. Hence, the benefits of the witchweed control program clearly outweigh its costs.

The U.S. Small Business Administration (SBA) defines a small agricultural producer as one with annual sales receipts of $750,000 or less. In the suppressive areas of North Carolina, most producers grow corn, soybeans, cotton, tobacco, sweet potatoes, or peanuts. It can be assumed that a similar variety of crops is grown in South Carolina. During 1997–2001, 83 percent of North Carolina's producers had annual sales of $99,999 or less and 17 percent had annual sales of $100,000 or more. It is, therefore, reasonable to assume that the majority of producers potentially affected by the witchweed quarantine are small entities under SBA standards.

Agricultural producers in suppressive areas bear costs associated with the movement of regulated articles into or through non-suppressive areas. For example, sweet potatoes and other crops that are harvested with attached soil must be cleaned in order to remove any witchweed seeds. Additionally, producers moving articles must arrange for their inspection, obtain a certificate or limited permit, or enter into a compliance agreement. Agricultural machinery must also be cleaned prior to movement; however, all costs of machinery cleaning are paid for by the Federal government. Although specific data are unavailable, we estimate that the annual costs borne directly by agricultural producers in witchweed regulated areas are very low.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This interim rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, we are amending 7 CFR part 301 as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for part 301 continues to read as follows:

Authority: 7 U.S.C. 7711, 7712, 7714, 7731, 7735, 7751, 7752, 7753, 7754, and 7760; 7 CFR 2.22, 2.80, and 371.3.

Section 301.75–15 also issued under Sec. 204, Title II, Pub. L. 106–113, 113 Stat. 1501A–293; sections 301.75–15 and 301.75–16 also issued under Sec. 203, Title II, Pub. L. 106–224, 114 Stat. 400 (7 U.S.C. 1421 note).

2. Section 301.80–2a is revised to read as follows:

§ 301.80–2a Regulated areas; generally infested and suppressive areas.

The civil divisions and parts of civil divisions described below are designated as witchweed regulated areas within the meaning of this subpart.

North Carolina

(1) *Generally infested areas.* None.

(2) *Suppressive areas.*

Bladen County. That area north of a line beginning at the intersection of the Robeson-Bladen County line and State Highway 211, then east along State Highway 211 Bypass to State Highway 242, then northeast along State Highway 242 to U.S. Highway 701, then north along U.S. Highway 701 to the Cape

Fear River, then southeast along the Cape Fear River to the Bladen-Columbus County line.

The Hardison, H.B., farm located on a field road 0.25 mile northwest of its intersection with State Secondary Road 1719 and 0.2 mile west of its intersection with State Secondary Road 1797.

Cumberland County. That area bounded on the west by the Cape Fear River, then by a line running east and northeast along the Fayetteville city limits to U.S. Highway 301, then northeast along U.S. Highway 301 to Interstate 95, then northeast along Interstate 95 to U.S. Highway 13, then east and northeast along U.S. Highway 13 to the Cumberland-Sampson County line.

The Bullock, Berline, farm located on the north side of State Secondary Road 1722 and 0.2 mile west of its intersection with U.S. Highway 301.

The Lewis, David, farm located on the west side of U.S. Highway 301 and 0.1 mile south of its intersection with State Secondary Road 1802.

The Lovick, Eugene, farm located on the north side of State Secondary Road 1732 and 0.9 mile west of its junction with U.S. Highway 301.

The McLaurin, George, farm located on the north side of State Secondary Road 1722 and 0.4 mile west of its intersection with U.S. Highway 301.

Pender County. The Hardie, George, farm located along a private drive on the southeast side of State Secondary Road 1104, 0.3 mile north of its intersection with State Secondary Road 1103.

The Peterson, Grady, farm located along a private drive on the southeast side of State Secondary Road 1104, 0.3 mile north of its intersection with State Secondary Road 1103.

The Zibelin, John, farm located 0.5 mile east of State Secondary Road 1105, 1.2 miles south of its intersection with State Secondary Road 1104.

Robeson County. That area south of a line beginning at the intersection of State Highway 211 with the Robeson-Bladen County line, then west to its intersection with the Robeson-Hoke County line.

The Biggs, Furman, farm located on the west side of State Secondary Road 1956, 0.3 mile southeast of its intersection with State Secondary Road 1959.

The Blanks, Donnie, farm located on the west side of State Secondary Road 1761, 0.3 mile north of its junction with State Secondary Road 1758.

The Britt, R.B., farm located on both sides of State Secondary Road 1765, 0.2 mile southeast of its junction with State Secondary Road 1758.

The Burnett, C.C., farm located on the north side of State Secondary Road 1757, 0.2 mile northeast of its junction with State Road 1001.

The McMillan, J.P., farm located on both sides of State Secondary Road 1770, 1.25 miles north of its junction with State Highway 211.

The McNair Investment farm located on the north side of State Secondary Road 1764, 1.5 miles west of its intersection with State Secondary Road 1762.

Sampson County. That area south of a line beginning at a point where U.S. Highway 421 intersects the Sampson-Harnett County line, then southeast along U.S. Highway 421 to the Sampson-Pender County line.

South Carolina

(1) *Generally infested areas.* None.

(2) *Suppressive areas.*

Horry County. That area bounded by a line beginning at a point where State Highway 9 intersects the Horry-Marion County line, then east along U.S. Highway 9 to State Secondary Highway 19, then southeast along State Secondary Highway 19 to Lake Swamp, then southwest along Lake Swamp to State Secondary Highway 99, then south and southwest along State Secondary Highway 99 to U.S. Highway 501, then west along U.S. Highway 501 to the Little Pee Dee River, then north along the Little Pee Dee River to the Lumber River, then north along the Lumber River to State Highway 9, the point of beginning.

The Jenerette, Miriam, farm located on the east side of Secondary Road 23, 3.4 miles south of the intersection of State Highway 917 and Secondary Road 23.

The Stanley, Andrew, farm located on the east side of State Highway 90, 0.2 mile east of its junction with an unpaved road known as Andrew Road.

The Livingston, Donnie, farm located on the east side of State Highway 90, 0.5 mile southeast of its junction with the State Secondary Road known as Bombing Range Road and 0.6 mile southeast of its junction with an unpaved road known as Dewitt Road and 0.2 mile west of its junction with an unpaved road known as Sand Hill Lane.

The Lewis, Lula, farm located on west side of State Highway 90, 0.4 mile west of its junction with an unpaved road known as Livingston Lane and 0.1 mile east of its junction with an unpaved road known as Beecher Lane.

The Chestnut, Alberta, farm located on the west side of State Highway 90, 0.3 mile west of its junction with a State Secondary Road known as Pint Circle.

The Stanley, Sam, farm located on the west side of State Highway 90, 0.4 mile west of its junction with a State Secondary Road known as Pint Circle.

The Adams, Lena J., farm located on the west side of State Highway 90, 1.2 miles west of its junction with the State Secondary Road known as Pint Circle.

The James, Norman, farm located west of State Highway 90, 0.4 mile west of its junction with an unpaved road known as Thompson Road.

The Todd, Don, farm located west of State Highway 90, 0.4 mile west of its junction with an unpaved road known as Tilley Swamp Road.

The Livingston, Pittman, farm located on the east side of State Highway 90, 2.2 miles north of its junction with State Highway 22.

The Vereen, Rufus C., farm located east of State Highway 90, 0.4 mile east of its junction with the State Secondary Road known as Old Chesterfield Road.

Marion County. The Brown, Lewis, farm located on the south side of State Highway 76, 1.4 miles south of its junction with State Secondary Road 201.

The Rowell, Molite, farm located on the west side of State Secondary Road 9, 0.2 mile west of its junction with an unpaved road known as Molitz Road.

The Taw Caw Plantation farm located on the south side of State Highway 76, 1.3 miles south of its junction with an unpaved road known as Bubba Road.

The Washington, James, Estate, farm located on the south side of State Highway 76, 0.1 mile south of its junction with an unpaved road known as Samuel Road.

The Hughes, Roosevelt, farm located west of State Secondary 9 and its junction with an unpaved road known as Bishop Road.

The Fowler, Herbert, Estate, farm located east of State Highway 501, 1.4 miles northeast of its junction with an unpaved road known as Bowling Creek Road and 0.1 mile north of its junction with an unpaved road known as Salem Road.

Done in Washington, DC, this 4th day of February 2003 .

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 03–3182 Filed 2–7–03; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–14347; Airspace Docket No. 03–ACE–4]

Modification of Class D Airspace; and Modification of Class E Airspace; Topeka, Philip Billard Municipal Airport, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: An examination of controlled airspace for Topeka, Philip Billard Municipal Airport, KS has revealed discrepancies in the Topeka, Forbes Field, KS airport reference point used in the legal descriptions for the Topeka, Philip Billard Municipal Airport, KS Class D airspace and the Class E airspace designated as a surface area. This action corrects those discrepancies by incorporating the current Topeka, Forbes Field, KS airport reference point in the Class D airspace and the Class E airspace designated as a surface area for Topeka, Philip Billard Municipal Airport, KS.

DATES: This direct final rule is effective on 0901 UTC, May 15, 2003.

Comments for inclusion in the Rules Docket must be received on or before March 25, 2003.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2003–14347/Airspace Docket No. 03–ACE–4, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520A DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2525.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR 71 modifies Class D airspace and Class E airspace designated as a surface area at Topeka, Philip Billard Municipal Airport, KS. It also brings the legal descriptions of these airspace areas into compliance with FAA Order 7400.2E, Procedures for Handling Airspace Matters. The areas will be depicted on appropriate aeronautical charts.

Class D airspace areas are published in Paragraph 5000 of FAA Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. Class E airspace areas designated as surface areas are published in Paragraph 6002 of the same FAA Order. The Class D and Class E airspace designations listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register,** and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Interested parties are invited to participate in this rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Comments wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2003–14347/Airspace Docket No. 03–ACE–4.'' The postcard will be date/time stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

Paragraph 5000 Class D Airspace

* * * * *

ACE KS D Topeka, Philip Billard Municipal Airport, KS

Topeka, Topeka, Philip Billard Municipal Airport, KS
(Lat. 39°04′07″N., long. 95°37′21″W.)
Topeka, Forbes Field, KS
(Lat. 38°57′03″N., long. 95°39′49″W.)

That airspace extending upward from the surface to and including 3,400 feet MSL within a 4-mile radius of Philip Billard Municipal Airport, excluding that airspace within the Topeka, Forbes Field, KS, Class D airspace area. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Director.

* * * * *

Paragraph 6002 Class E Airspace Designated as Surface Areas

* * * * *

ACE KS E2 Topeka, Forbes Field, KS

Topeka, Topeka, Philip Billard Municipal Airport, KS
(Lat. 39°04′07″N., long. 95°37′21″W.)
Topeka, Forbes Field, KS
(Lat. 38°57′03″N., long. 95°39′49″W.)

Within a 4-mile radius of Philip Billard Municipal Airport, excluding that airspace within the Topeka, Forbes Field, KS, Class D and E airspace areas. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter by continuously published in the Airport/Facility Director.

* * * * *

Issued in Kansas City, MO, on January 30, 2003.

Herman J. Lyons, Jr.

Manager, Air Traffic Division, Central Region.

[FR Doc. 03–3266 Filed 2–7–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2002–13946; Airspace Docket No. 02–ASO–29]

Amendment of Class E5 Airspace; Memphis, TN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E5 airspace at Memphis, TN. As a result of an evaluation, the Memphis, TN, Class E5 airspace area has been amended to contain the Nondirectional Radio Beacon (NDB) Runway (RWY) 9 Standard Instrument Approach Procedure (SIAP) to Memphis International Airport and the NDB RWY 17 and NDB—B SIAP's to West Memphis Municipal Airport. Additional controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to contain the SIAP's.

DATES: 0901 UTC, May 15, 2003.

FOR FURTHER INFORMATION CONTACT: Walter R. Cochran, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5627.

SUPPLEMENTARY INFORMATION:

History

On December 24, 2002, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by amending Class E5 airspace at Memphis, TN, (67 FR 78397). This action provides adequate Class E airspace for IFR operations at Memphis International Airport and West Memphis Municipal Airport. Designations for Class E are published in FAA Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR part 71.1. The Class E designations listed in this document will be published subsequently in the Order.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) amends Class E5 airspace at Memphis, TN.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR Part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 17.1 of Federal Aviation Administration Order 7400.9K, Airspace Designations and Reporting Points, dated August 30, 2002, and effective September 16, 2002, is amended as follows: Paragraph 6005 Class E Airspace Areas Extending Upward from 700 feet or More Above the Surface of the Earth.

* * * * *

ASO TN E5 Memphis, TN [REVISED]

Memphis International Airport, TN
Lat. 35°02′33″ N, long. 89°58′36″ W
Olive Branch Airport
Lat. 34°58′44″ N, long. 89°47′13″ W
West Memphis Municipal Airport
Lat. 35°08′06″ N, long. 90°14′04″ W
General DeWitt Spain Airport
Lat. 35°12′02″ N, long. 90°03′14″ W
Elvis NDB
Lat. 35°03′41″ N, long. 90°04′18″ W
West Memphis NDB
Lat. 35°08′22″ N, long. 90°13′57″ W

That airspace extending upward from 700 feet above the surface within an 8-mile radius of Memphis International Airport, and within 4 miles north and 8 miles south of the 271° bearing from the Elvis NDB extending from the 8-mile radius to 16 miles west of the Elvis NDB, and within a 7.5-mile radius of Olive Branch Airport, and within a 6.5-mile radius of West Memphis Municipal Airport, and within 4 miles east and 8 west of the 197° from the West Memphis NDB extending from the 6.5-miles radius to 16 miles south of the West Memphis NDB, and within 4 miles east and 8 miles west of the 353° bearing from the West Memphis NDB extending from the 6.5-mile radius to 16 miles north of the West Memphis NDB, and within a 6.4-mile radius of General DeWitt Spain Airport; excluding that airspace within the Millington, TN, Class E airspace area.

* * * * *

Issued in College Park, Georgia, on January 31, 2003.

Walter R. Cochran,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 03–3270 Filed 2–7–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 150

Airport Noise Compatibility Planning

CFR Correction

In Title 14 of the Code of Federal Regulations, Parts 140 to 199, revised as of January 1, 2002, on page 99, in Appendix A to Part 150, equation (3) is revised to read as follows:

Appendix A to Part 150—Noise Exposure Maps

* * * * *

$$L_{dn} = 10 \log_{10}\left[\frac{1}{86400}\left(\begin{array}{l}\int_{0000}^{0700} 10^{[L_A(t)+10]/10}\,dt \\ +\int_{0700}^{2200} 10^{L_A(t)/10}\,dt + \int_{2200}^{2400} 10^{[L_A(t)+10]/10}\,dt\end{array}\right)\right] \quad (3)$$

* * * * *

[FR Doc. 03–55506 Filed 2–7–03; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 375

[Docket No. RM03–5–000; Order No. 629]

Before Commissioners: Pat Wood, III, Chairman; William L. Massey, and Nora Mead Brownell; Amendment to Delegations of Authority to the Chief Administrative Law Judge

Issued January 29, 2003.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule.

SUMMARY: This Final Rule clarifies the authority of the Chief Administrative Law Judge (Chief ALJ) to establish procedural timelines in matters set for hearing. The change is necessary to avoid any confusion over the Chief ALJ's authority to set and extend time frames. It will benefit parties and the public by helping to ensure that matters set for hearing are processed efficiently.

EFFECTIVE DATE: The rule will become effective January 29, 2003.

FOR FURTHER INFORMATION CONTACT: Wilbur Miller, Office of General Counsel, 888 First Street, NE., Washington, DC 20426, (202) 502–8953, *Wilbur.Miller@FERC.gov.*

SUPPLEMENTARY INFORMATION: 1. This final rule clarifies the authority of the Chief Administrative Law Judge (Chief ALJ) to set and extend procedural time standards in matters set for hearing. Currently, the Chief ALJ designates each matter for one of several specified timetables depending on the complexity of the case. The timetables contain deadlines for such matters as hearings, briefing, and the initial decision. The Commission regards these time standards as critical to the efficient processing of matters assigned for hearing. More detailed information about the time standards is available on the Commission's Web site at *www.ferc.gov/legal/oalj/standards.htm.*

2. Some confusion may have arisen over the Chief ALJ's authority to establish time standards for individual cases.[1] This final rule is intended to eliminate any such confusion. Accordingly, it amends the Commission's delegations of authority to the Chief ALJ with respect to matters pending under 18 CFR part 385, subpart E. Specifically, this rule amends Part 375 of the Commission's regulations, which contains the Commission's delegations of authority to its staff, by adding to the Chief ALJ's delegations the authority to set and extend procedural time standards in matters in litigation unless the Commission states otherwise in its order setting a hearing.[2] The times set by the Chief ALJ are mandatory, not advisory, and need not be specifically authorized by the Commission in individual cases.

3. The Commission is issuing this order as a final rule without a period for public comment. Under 5 U.S.C. 553(b), notice and comment procedures are unnecessary where a rulemaking concerns only agency procedure and practice, or where the agency finds that notice and comment is unnecessary. This rule concerns only matters of agency procedure and, in fact, makes no change to existing procedures. It thus will not significantly affect regulated entities or the general public. Therefore, the Commission finds notice and comment procedures to be unnecessary.

4. In addition, in accordance with 5 U.S.C. 553(d)(3), the Commission finds that good cause exists to make this Final Rule effective immediately upon issuance. As stated above, the rule clarifies rather than changes existing procedures. Therefore, no point would be served in making it effective at a later date.

Information Collection Statement

5. The Office of Management and Budget's (''OMB's'') regulations require that OMB approve certain information collection requirements imposed by agency rule.[3] This Final Rule contains no information reporting requirements, and is not subject to OMB approval.

Environmental Analysis

6. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[4] Issuance of this Final Rule does not represent a major federal action having a significant adverse effect on the human environment under the Commission's regulations implementing the National Environmental Policy Act.[5] Part 380 of the Commission's regulations lists exemptions to the requirement that an Environmental Analysis or Environmental Impact Statement be done. Included is an exemption for procedural, ministerial or

[1] *See* Midwest Independent System Operator, *et al.*, Docket No. EL02–111–000, (Jan. 14, 2003) (Order Extending Briefing Schedule).

[2] *See* new 18 CFR 375.304(b)(1)(v) (2002).

[3] 5 CFR part 1320.

[4] Order No. 486, Regulations Implementing the National Environmental Policy Act, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. Preambles 1986–1990 ¶ 30,783 (1987).

[5] Order No. 486, 52 FR 47897 (Dec. 17, 1987); FERC Stats. & Regs. [Regulations Preambles 1986–1990] ¶ 30,783 (Dec. 10, 1984) (*codified at* 18 CFR part 380).

internal administrative actions.[6] This rulemaking is exempt under that provision.

Regulatory Flexibility Act Certification

7. The Regulatory Flexibility Act of 1980 (RFA)[7] generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. The Commission certifies that this final rule will not have such an impact. An analysis under the RFA therefore is not required.

Document Availability

8. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through FERC's Home page (*http://www.ferc.gov*) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. Eastern time) at 888 First Street, NE., Room 2A, Washington, DC 20426.

9. From FERC's Home page on the Internet, this information is available in the Federal Energy Regulatory Records Information System (FERRIS). The full text of this document is available on FERRIS in PDF and WordPerfect format for viewing, printing, and/or downloading. To access this document in FERRIS, type the docket number excluding the last three digits of this document in the docket number field.

10. User assistance is available for FERRIS and the FERC's website during normal business hours. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Effective Date

11. This final rule is effective immediately upon issuance. Congressional review of Final Rules does not apply to this Final Rule, because the rule concerns agency procedure and practice and will not substantially affect the rights of non-agency parties.

List of Subjects in 18 CFR Part 375

Authority delegations (Government agencies), Seals and insignia, Sunshine Act.

By the Commission.

Magalie R. Salas,

Secretary.

In consideration of the foregoing, the Commission amends Part 375, Chapter I, Title 18, *Code of Federal Regulations,* as follows.

[6] 18 CFR 380.4(1) and (5).

[7] 5 U.S.C. 601–612.

PART 375—THE COMMISSION

1. The authority citation for part 375 continues to read as follows:

Authority: 5 U.S.C. 551–557; 15 U.S.C. 717–717w, 3301–3432; 16 U.S.C. 791–825r, 2601–2645; 42 U.S.C. 7101–7352.

2. Section 375.304 is amended by revising paragraph (b)(1)(iv) and adding paragraph (b)(1)(v) to read as follows:

§ 375.304 Delegations to the Chief Administrative Law Judge

* * * * *

(b) * * *

(1) * * *

(iv) Extend any close or record date ordered by the Commission in a proceeding for good cause, and

(v) Set or extend procedural time standards, including but not limited to hearing, briefing and initial decision dates, including dates set by the Commission, unless the Commission states otherwise in its hearing order.

* * * * *

[FR Doc. 03–3115 Filed 2–7–03; 8:45 am]

BILLING CODE 6718–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 58

Conforming Regulations Regarding Removal of Section 507 of the Federal Food, Drug, and Cosmetic Act

CFR Correction

In Title 21 of the Code of Federal Regulations, Parts 1 to 99, revised as of April 1, 2002, on page 310, in § 58.3, paragraph (e)(9) is removed and reserved.

[FR Doc. 03–55505 Filed 2–7–03; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF STATE

22 CFR Part 123

Licenses for the Export of Defense Articles

CFR Correction

In Title 22 of the Code of Federal Regulations, Parts 1 to 299, revised as of April 1, 2002, on page 447, the authority citation for part 123 is revised to read as follows:

Authority: Secs. 2, 38, and 71, Pub. L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2797); 22 U.S.C. 2753; E.O. 11958, 42 FR 4311; 3 CFR, 1977 Comp. p. 79; 22 U.S.C. 2658; Pub. L. 105–261, 112 Stat. 1920.

[FR Doc. 03–55503 Filed 2–7–03; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 100

RIN 1219–AB32

Criteria and Procedures for Proposed Assessment of Civil Penalties

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Direct final rule.

SUMMARY: The Mine Safety and Health Administration (MSHA) is revising its civil penalty assessment amounts to adjust for inflation. The Debt Collection Improvement Act of 1996 (DCIA) requires MSHA to adjust all civil penalties for inflation at least once every four years according to the formula specified in the Federal Civil Penalties Inflation Adjustment Act of 1990 (Inflation Adjustment Act). MSHA intends that this action will maintain the deterrent effect of its civil penalties and encourage compliance with the Federal Mine Safety and Health Act of 1977 (Mine Act) and its regulations. The revised penalties apply to citations and orders issued on or after the effective date, and not to citations or orders pending assessment on the effective date.

DATES: This direct final rule is effective April 11, 2003 without further notice, unless we (MSHA) receive significant adverse comment by March 12, 2003.

ADDRESSES: Clearly identify comments as such and submit them either electronically to *comments@msha.gov*; by facsimile to (202) 693–9441; or by regular mail or hand delivery to MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Blvd., Room 2313, Arlington, Virginia 22209–3939. Comments are posted for public viewing at *http://www.msha.gov/currentcomments.htm.*

FOR FURTHER INFORMATION CONTACT: Marvin W. Nichols, Director; Office of Standards, Regulations, and Variances, MSHA; Phone: (202) 693–9440; FAX: (202) 693–9441; E-mail: *nichols-marvin@msha.gov.*

SUPPLEMENTARY INFORMATION:

I. Direct Final Rule

The Debt Collection Improvement Act of 1996 requires MSHA to adjust our civil penalties for inflation at least once every four years. MSHA has determined that this rulemaking is suitable for a direct final rule because we do not expect to receive any significant adverse comments. A significant adverse comment is one that explains why the rule is inappropriate, including challenges to the rule's underlying premise or approach, or why it will be ineffective or unacceptable without a change. In determining whether a comment necessitates withdrawal of this direct final rule, we will consider whether it warrants a substantive response in a notice and comment process. If we receive such comment, we will publish a timely withdrawal of this direct final rule in the **Federal Register**.

II. Rulemaking Background

Sections 105(a) and 110 of Mine Act require us (MSHA) to propose a civil penalty assessment for each violation of the Mine Act or a mandatory safety and health standard promulgated under the Mine Act. The Mine Act originally provided that—

(1) The maximum penalty for each violation would not exceed $10,000;

(2) The maximum penalty for failure to correct a violation cited under § 104(a) within the period permitted for its correction would not exceed $1,000 for each day that the violation continued to exist; and

(3) The maximum penalty for a miner who willfully violates the mandatory safety standards relating to smoking or the carrying of smoking materials would not exceed $250 for each occurrence of such violation.

On May 30, 1978 (43 FR 23514), MSHA promulgated its first regulations relating to civil penalty assessments under the Mine Act. These regulations included a Penalty Conversion Table for regular assessments based on the six criteria enumerated in 30 CFR 100.3(a).

On May 21, 1982 (47 FR 22286), MSHA promulgated a rule that—

(1) Revised its regular assessment Penalty Conversion Table;

(2) Further defined the criteria for issuing special assessments; and

(3) Created a $20 single penalty assessment for those violations that were not reasonably likely to result in reasonably serious injury or illness and which were abated in a timely manner.

Neither the 1978 nor the 1982 rule contained provisions addressing assessment of civil penalties for failing to abate violations of the Mine Act or for smoking or carrying smoking materials because the Mine Act had set these penalty amounts.

In 1990, the Omnibus Budget Reconciliation Act of 1990 (Budget Act), Pub. L. 101–508, amended the Mine Act. Section 3102 of the Budget Act raised the maximum MSHA civil penalty per violation from $10,000 to $50,000; and raised the civil penalty for failure to correct a violation under § 104(a) of the Mine Act from $1,000 to $5,000 per day. The miner smoking penalty remained at $250. Also in 1990, Congress passed the Federal Civil Penalties Inflation Adjustment Act of 1990 (Inflation Adjustment Act), Pub. L. 101–410, amending the Budget Act.

On January 24, 1992 (57 FR 2968), as amended December 21, 1992 (57 FR 60690), MSHA published a final rule which implemented the penalty increases prescribed by the Budget Act and accounted for inflation since 1982. The rule revised the regular assessment Penalty Conversion Table and raised the $20 single penalty assessment to $50.

In 1996, Congress passed the Omnibus Consolidated Rescissions and Appropriations Act of 1996 (OCRAA), Pub. L. 104–134. Chapter 10 of the OCRAA, titled the "Debt Collection Improvement Act of 1996" (DCIA), modified the Inflation Adjustment Act. The DCIA requires each agency to adjust for inflation each civil monetary penalty provided for by law within its jurisdiction at least once every four years. Agencies must make this cost-of-living adjustment using the inflation adjustment formula described under § 5 of the Inflation Adjustment Act. Although the first adjustment was not allowed to exceed 10% of the existing penalty, subsequent adjustments are not subject to this limitation.

On April 22, 1998 (63 FR 20032), MSHA published a final rule increasing civil penalties to comply with the DCIA. To account for inflation since 1992, this rule raised the maximum proposed civil penalty assessment from $50,000 to $55,000, raised the single penalty assessment from $50 to $55, and revised the Penalty Conversion Table. This rule also codified the penalties assessed under §§ 110(b) and 110(g) of the Mine Act into 30 CFR 100, raising the daily penalty for failing to abate violations from $5,000 to $5,500 and raising the penalty for smoking or carrying smoking materials from $250 to $275.

III. Discussion and Summary of the Direct Final Rule

A. General Discussion

In passing the Inflation Adjustment Act, Congress stated its concern that the punitive and deterrent effects of civil penalties erode over time when the penalties fail to keep pace with inflation. This direct final rule makes a cost-of-living adjustment to MSHA's proposed civil penalty assessment amounts in compliance with the Inflation Adjustment Act. Under § 5 of the Inflation Adjustment Act, civil monetary penalties are to be increased by a "cost-of-living" adjustment. The statute defines "cost-of-living" adjustment as—

* * * The percentage * * * by which—

(1) the Consumer Price Index for the month of June of the calendar year preceding the adjustment, exceeds;

(2) the Consumer Price Index for the month of June of the calendar year in which the amount of such civil monetary penalty was last set or adjusted pursuant to law.

The term *Consumer Price Index* (CPI) means "the Consumer Price Index for all-urban consumers published by the Department of Labor."

In determining the current cost-of-living adjustment for its proposed civil penalty assessments, MSHA calculated the following:

538.9.0 (the CPI for June 2002, the calendar year preceding the current adjustment).

488.2 (the CPI for June 1998, the calendar year in which the MSHA civil penalties were last adjusted).

10.4% = (538.9–488.2)/488.2 = rounded inflation adjustment factor = percentage increase.

The Inflation Adjustment Act also included criteria for rounding the cost-of-living adjustment amount as follows:

Any increase * * * shall be rounded to the nearest—

(1) Multiple of $10 in the case of penalties less than or equal to $100;

(2) Multiple of $100 in the case of penalties greater than $100 but less than or equal to $1,000;

(3) multiple of $1,000 in the case of penalties greater than $1,000 but less than or equal to $10,000;

(4) multiple of $5,000 in the case of penalties greater than $10,000 but less than or equal to $100,000;

The Inflation Adjustment Act only requires us to use the cost-of-living adjustment and rounding formula for penalties that were statutorily established by Congress. The Mine Act contains only three such penalties: the civil maximum penalty, the daily maximum penalty, and the miner smoking penalty. Consequently, this direct final rule adjusts our regulatory penalties, those not established by the Mine Act, by 10.4% truncated to the whole dollar.

B. Section-by-Section Analysis

The following discussion explains the direct final rule's effect on existing civil penalty amounts.

Section 100.3 Determination of Penalty Amount; Regular Assessment

This section describes the criteria that MSHA will use to determine the proposed civil penalty assessment for violations of the Mine Act or regulations promulgated under the Mine Act.

Paragraph (a) of this section specifies the maximum per violation proposed civil penalty assessment. This direct final rule increases the maximum civil penalty by $5,000 from $55,000 to $60,000, reflecting the 10.4% adjustment as calculated in accordance with the Inflation Adjustment Act. Because the Mine Act originally required this penalty, we have rounded the increase to $5,000 in accordance with the Inflation Adjustment Act rounding requirements.

Paragraph (g) of this section includes a Penalty Conversion Table that correlates the total of the points assigned for each criterion enumerated in this section with a proposed civil penalty assessment. Current penalties range from $66 to $55,000. The increased civil penalties in the Penalty Conversion Table range from $72 to $60,000 to reflect a 10.4% adjustment factor. Because the Mine Act originally did not require these penalties, with the exception of the maximum civil penalty, we have truncated the adjusted penalty to the nearest whole dollar.

Section 100.4 Determination of Penalty; Single Penalty Assessment

This section pertains to violations that are not reasonably likely to result in reasonably serious injury or illness and which are abated in a timely manner. This direct final rule increases the single penalty assessment by $5 from the existing $55 to $60 to reflect a 10.4% adjustment factor. Because the Mine Act originally did not require this penalty, we have truncated the adjusted penalty to the nearest whole dollar.

Section 100.5 Determination of Penalty; Special Assessment

This section pertains to violations, which are of such a nature or seriousness that we cannot determine an appropriate penalty using the regular assessment formula (§ 100.3) or the single penalty assessment (§ 100.4). MSHA field personnel review certain categories of violations for special assessment. If the violation qualifies, experienced MSHA mine safety and health specialists determine the special assessment penalty based on the facts and circumstances of each case.

Paragraph (c) of this section addresses penalties which may be assessed daily to an operator for failure to correct a violation within the period permitted for its correction. This direct final rule increases the existing maximum daily civil penalty by $1,000 from $5,500 to $6,500 to reflect the 10.4% adjustment factor computed under the Inflation Adjustment Act. Because the Mine Act originally required this penalty, we have rounded the increase to $1,000 in accordance with the Inflation Adjustment Act rounding requirements.

Paragraph (d) of this section addresses penalties for miners who willfully violate mandatory safety standards relating to the use or carrying of smoking materials underground. This direct final rule keeps the miner's smoking penalty at $275. Because the Mine Act originally required this penalty, we have rounded the increase to $0 (the nearest $100) in accordance with the Inflation Adjustment Act rounding requirements.

IV. Executive Order 12866, the Regulatory Flexibility Act, and the Small Business Regulatory Enforcement Fairness Act

In accordance with Executive Order (E.O.) 12866, we have analyzed the estimated costs and benefits associated with the revisions of Part 100—Criteria and Procedures for Proposed Assessment of Civil Penalties. We estimate that the direct final rule will result in increased costs to the mining industry of about $2.5 million annually, which is not an economically significant regulatory action under § 3(f)(1) of E.O. 12866.

In accordance with § 605 of the Regulatory Flexibility Act (RFA), we certify that this direct final rule does not have a significant economic impact on a substantial number of small entities. Under the Small Business Regulatory Enforcement Fairness Act (SBREFA) amendments to the RFA, we must include the factual basis for this certification in the direct final rule. Accordingly, we are publishing a summary of the factual basis for our regulatory flexibility certification statement in the **Federal Register**, as part of this preamble, and are providing a copy to the Small Business Administration (SBA), Office of Advocacy. We also will mail a copy of the direct final rule, including the preamble and certification statement, to mine operators and miners' representatives and post it on our Internet Home Page at *www.msha.gov.*

This direct final rule increases certain civil monetary penalties to account for inflation, as required by the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended. This statute specifies the procedure for calculating the adjusted civil monetary penalties and does not allow us to vary the calculation to minimize the effect on small entities. Moreover, the actual amount of the increase in penalties does not meet the threshold for a significant regulatory action, which is set forth in the RFA. We discuss our quantitative analysis supporting this conclusion below.

Factual basis for certification. Traditionally, MSHA has considered a small mine to be one with fewer than 20 employees. The SBA definition for a small business in the mining industry is one with 500 or fewer employees. For the purpose of this certification, we have analyzed the costs and evaluated the impact of this direct final rule on mines using both MSHA's traditional definition and SBA's definition for a small mine.

We analyzed the impact of this direct final rule separately for the two major sectors of the mining industry: coal mining operations and metal/nonmetal mining operations. We compared the costs of the direct final rule in each sector to the revenues for each sector for each size category analyzed. In each case, the results indicated that the costs were much less than 1% of revenue.

In determining revenues for coal mines, we multiplied coal production data (in tons) for mines in specific size categories (reported to MSHA quarterly) by the average price per ton for coal as determined in the *Coal Industry Annual* 2000 (U.S. Department of Energy, Energy Information Administration). We obtained revenue data for metal and nonmetal mines from the *Mineral Commodities Summaries 2001* (U.S. Department of the Interior, Geological Survey).

The following table summarizes the results of our analysis.

COSTS COMPARED TO REVENUES BY MINE SIZE

Mine size (employment)	Number of mines	Estimated cost of rule	Estimated revenue (millions)	Estimated cost/mine	Cost as percent of revenue
Coal Mines					
Small <20	1,078	$720,498	$586	$668	0.123%
Small <=500	1,901	1,270,563	15,093	668	0.008%
Metal and Nonmetal (M/NM) Mines					
Small <20	9,928	1,002,761	8,377	101	0.012%
Small <=500	11,620	1,173,659	36,802	101	0.003%

The full economic analysis, including the factual basis for our regulatory flexibility certification statement, is provided in the Regulatory Economic Analysis (REA) supporting this direct final rule. The REA is available from MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Blvd., Room 2313, Arlington, Virginia 22209–3939. You can also view and obtain a copy from our Internet Home Page at *www.msha.gov*.

V. Other Regulatory Considerations

A. Paperwork Reduction Act of 1995

This direct final rule contains no information collections subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

B. Unfunded Mandates Reform Act of 1995

This direct final rule affects about 220 small mines operated by governmental jurisdictions to provide aggregates for the construction and repair of highways and roads. We have determined, for purposes of § 202 of the Unfunded Mandates Reform Act of 1995, that this direct final rule does not include any Federal mandate that may result in increased expenditures by State, local, or tribal governments in the aggregate of more than $100 million, or increased expenditures by the private sector of more than $100 million. We also determined, for purposes of § 203, that this direct final rule does not significantly or uniquely affect these entities.

C. Executive Order 12630: Government Actions and Interference with Constitutionally Protected Property Rights

This direct final rule is not subject to Executive Order 12630 because it does not involve implementation of a policy with takings implications.

D. Executive Order 12988: Civil Justice Reform

We have reviewed Executive Order 12988 and determined that this direct final rule will not unduly burden the Federal court system. We wrote the direct final rule to provide a clear legal standard for affected conduct and have reviewed it carefully to eliminate drafting errors and ambiguities.

E. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

In accordance with Executive Order 13045, we have evaluated the environmental health and safety effects of this rule on children and have determined that it will have no effects on children.

F. Executive Order 13132: Federalism

We have reviewed this rule in accordance with Executive Order 13132 regarding federalism, and have determined that it will not have federalism implications.

G. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

We certify that the direct final rule does not impose substantial direct compliance costs on Indian tribal governments.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

In accordance with Executive Order 13211, we have reviewed the direct final rule for its energy impacts. The direct final rule has no effect on the distribution or use of energy. The only impact of the rule on the supply of energy is through its effect on the price of coal or the production of coal. Impacts of the rule on metal and nonmetal mines do not affect the supply of energy.

The final rule has no direct effects on the production of coal. The rule does not prevent the mining of particular coal deposits, nor does the rule require coal deposits to be mined at a slower pace. The only impact of the rule on coal mine production is indirect, via the cost or price of coal. The estimated annual cost of the final rule for the coal mining industry is about $1.3 million. The annual revenues of the coal mining industry in 2000 were about $17,700 million. The cost of the rule for the coal mining industry is, therefore, equal to about 0.007% of revenues. Even if we were to suppose that the increased cost caused by the rule would be fully reflected in coal prices, the impact would be negligible.

Accordingly, we have determined that the direct final rule has no significant adverse effect on the supply, distribution, or use of energy, and no reasonable alternatives to this action are necessary.

I. Executive Order 13272: Proper Consideration of Small Entities in Agency Rulemaking

In accordance with Executive Order 13272, MSHA has thoroughly reviewed the direct final rule to assess and take appropriate account of its potential impact on small businesses, small governmental jurisdictions, and small organizations. As discussed previously in this preamble, MSHA has determined that the direct final rule does not have a significant economic impact on a substantial number of small entities.

List of Subjects in 30 CFR Part 100

Mine safety and health, Penalties.

Dated: February 4, 2003.

Dave D. Lauriski,

Assistant Secretary for Mine Safety and Health.

For the reasons set out in the preamble, and under the authority of the Federal Mine Safety and Health Act of 1977, chapter I, subchapter P, part 100 of title 30 of the Code of Federal Regulations is amended as follows:

PART 100—CRITERIA AND PROCEDURES FOR PROPOSED ASSESSMENT OF CIVIL PENALTIES

1. The authority citation for part 100 continues to read as follows:

Authority: 30 U.S.C. 815, 820, 957.

2. Section 100.3 is amended by revising the first sentence of the introductory text of paragraph (a) and by revising the Penalty Conversion Table in paragraph (g) to read as follows:

§ 100.3 Determination of penalty amount; regular assessment.

(a) *General.* The operator of any mine in which a violation occurs of a mandatory health or safety standard or who violates any other provision of the Mine Act, shall be assessed a civil penalty of not more than $60,000. * * *

* * * * *

(g) * * *

PENALTY CONVERSION TABLE

Points	Penalty ($)
20 or fewer	72
21	80
22	87
23	94
24	101
25	109
26	120
27	131
28	142
29	153
30	164
31	178
32	193
33	207
34	221
35	237
36	254
37	273
38	291
39	310
40	327
41	354
42	383
43	409
44	437
45	463
46	500
47	536
48	629
49	749
50	878
51	1,033
52	1,198
53	1,376
54	1,566
55	1,769
56	2,003
57	2,252
58	2,515
59	2,793
60	3,086
61	3,419
62	3,770
63	4,137
64	4,521
65	4,856
66	5,099
67	5,342
68	5,585
69	5,828
70	6,071
71	6,374
72	6,678
73	6,981
74	7,285
75	7,588
76	7,892
77	8,499
78	9,106
79	9,713
80	10,321
81	11,535
82	12,749
83	13,963
84	15,177
85	16,392
86	18,213
87	20,642
88	23,070
89	25,498
90	27,927
91	30,355
92	33,391
93	36,427
94	39,462
95	42,498
96	45,533
97	48,569
98	51,605
99	54,640
100	60,000

* * * * *

3. Section 100.4 is amended by revising paragraph (a) to read as follows:

§ 100.4 Determination of penalty; single penalty assessment.

(a) An assessment of $60 may be imposed as the civil penalty where the violation is not reasonably likely to result in a reasonably serious injury or illness (non-S&S) and is abated within the time set by the inspector.

(1) If the violation is not abated within the time set by the inspector, the violation will not be eligible for the $60 single penalty and will be processed through either the regular assessment provision (§ 100.3) or special assessment provision (§ 100.5).

(2) If the violation meets the criteria for excessive history under paragraph (b) of this section, the violation will not be eligible for the $60 single penalty and will be processed through the regular assessment provision (§ 100.3).

* * * * *

4. Section 100.5 is amended by revising paragraph (c) to read as follows:

§ 100.5 Determination of penalty; special assessment.

* * * * *

(c) Any operator who fails to correct a violation for which a citation has been issued under section 104(a) of the Mine Act within the period permitted for its correction may be assessed a civil penalty of not more than $6,500 for each day during which such failure or violation continues.

* * * * *

[FR Doc. 03–3160 Filed 2–7–03; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF THE TREASURY

31 CFR Part 103

RIN 1506–AA34

Financial Crimes Enforcement Network; Amendment to the Bank Secrecy Act Regulations—Requirement That Currency Dealers and Exchangers Report Suspicious Transactions

AGENCY: Financial Crimes Enforcement Network (FinCEN), Treasury.

ACTION: Final rule.

SUMMARY: This document contains amendments to the regulations implementing the statute generally referred to as the Bank Secrecy Act. The amendments require currency dealers and exchangers to report suspicious transactions to the Department of the Treasury. Further, the amendments require all money services businesses to which the suspicious transaction reporting rule applies to report transactions involving suspected use of the money services business to facilitate criminal activity. The amendments constitute a further step in the creation of a comprehensive system for the reporting of suspicious transactions by the major categories of financial institutions operating in the United States, as a part of the counter-money laundering program of the Department of the Treasury. This document also contains a technical correction to 31 CFR 103.19, changing the name of the form by which brokers and dealers in securities shall report suspicious transactions.

DATES: *Effective Date:* March 12, 2003.

Applicability Date: The applicability date is August 11, 2003.

FOR FURTHER INFORMATION CONTACT: David M. Vogt, Acting Executive Associate Director, Office of Regulatory Programs, FinCEN, (202) 354–6400; and Judith R. Starr, Chief Counsel, and Christine L. Schuetz, Attorney-Advisor, Office of Chief Counsel, FinCEN, at (703) 905–3590.

SUPPLEMENTARY INFORMATION:

I. Background

A. Statutory Provisions

The Bank Secrecy Act (''BSA''), Public Law 91–508, as amended, codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–1959, and 31 U.S.C. 5311–5314, 5316–5332, authorizes the Secretary of the Treasury, *inter alia,* to issue regulations requiring financial institutions to keep records and to file reports that are determined to have a high degree of usefulness in criminal, tax, and regulatory matters, or in the conduct of intelligence or counter-intelligence activities to protect against international terrorism, and to implement counter-money laundering programs and compliance procedures.[1] Regulations implementing Title II of the BSA (codified at 31 U.S.C. 5311–5314, 5316–5332) appear at 31 CFR Part 103. The authority of the Secretary to administer the BSA has been delegated to the Director of FinCEN.

With the enactment of 31 U.S.C. 5318(g) in 1992,[2] Congress authorized the Secretary of the Treasury to require financial institutions to report suspicious transactions. As amended by the USA PATRIOT ACT, subsection (g)(1) states generally:

> The Secretary may require any financial institution, and any director, officer, employee, or agent of any financial institution, to report any suspicious transaction relevant to a possible violation of law or regulation.

Subsection (g)(2)(A) provides further that

> If a financial institution or any director, officer, employee, or agent of any financial institution, voluntarily or pursuant to this section or any other authority, reports a suspicious transaction to a government agency—
>
> (i) The financial institution, director, officer, employee, or agent may not notify any person involved in the transaction that the transaction has been reported; and
>
> (ii) No officer or employee of the Federal Government or of any State, local, tribal, or territorial government within the United States, who has any knowledge that such report was made may disclose to any person involved in the transaction that the transaction has been reported, other than as necessary to fulfill the official duties of such officer or employee.

Subsection (g)(3)(A) provides that neither a financial institution, nor any director, officer, employee, or agent of any financial institution

> that makes a voluntary disclosure of any possible violation of law or regulation to a government agency or makes a disclosure pursuant to this subsection or any other authority * * * shall * * * be liable to any person under any law or regulation of the United States, any constitution, law, or regulation of any State or political subdivision of any State, or under any contract or other legally enforceable agreement (including any arbitration agreement), for such disclosure or for any failure to provide notice of such disclosure to the person who is the subject of such disclosure or any other person identified in the disclosure.

Finally, subsection (g)(4) requires the Secretary of the Treasury, ''to the extent practicable and appropriate,'' to designate ''a single officer or agency of the United States to whom such reports shall be made.'' [3] The designated agency is in turn responsible for referring any report of a suspicious transaction to ''any appropriate law enforcement, supervisory agency, or United States intelligence agency for use in the conduct of intelligence or counterintelligence activities, including analysis, to protect against international terrorism.'' *Id.,* at subsection (g)(4)(B).

B. Suspicious Activity Reporting by Money Services Businesses

For purposes of regulations implementing the BSA, a ''money services business'' includes each agent, agency, branch, or office within the United States of any person (except a bank or person registered with, and regulated or examined by, the Securities and Exchange Commission or the Commodity Futures Trading Commission) doing business in one or more of the following capacities:

- Currency dealer or exchanger;
- Check casher;
- Issuer of traveler's checks, money orders, or stored value;
- Seller or redeemers of traveler's checks, money orders, or stored value;
- Money transmitter; and
- The United States Postal Service (except with regard to the sale of postage or philatelic products).

Persons who do not exchange currency, cash checks, or issue, sell, or redeem traveler's checks, money orders, or stored value in an amount greater than $1,000 to any person on any day in one or more transactions are not money services businesses for purposes of the BSA.[4]

On March 14, 2000, FinCEN published a final rule requiring certain money services business to report suspicious transactions to FinCEN beginning January 1, 2002 (the ''MSB SAR rule'').[5] The MSB SAR rule as originally promulgated, found at 31 CFR 103.20, required certain money services businesses to file a report of any transaction conducted or attempted by, at, or through the money services business, involving or aggregating at least $2,000 (or $5,000 to the extent that the identification of transactions required to be reported is derived from a review of clearance records of money orders or traveler's checks that have been sold or processed), when the money services business knows, suspects, or has reason to suspect that the transaction falls into one of three reporting categories contained in the rule. The first reporting category, described in 31 CFR 103.20(a)(2)(i), includes transactions involving funds derived from illegal activity or intended or conducted in order to hide or disguise funds or assets derived from illegal activity. The second category, described in 31 CFR 103.20(a)(2)(ii), involves transactions designed to evade the requirements of the BSA. The third category, described in 31 CFR 103.20(a)(2)(iii), involves transactions that appear to have no business purpose or that vary so substantially from normal commercial activities or

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[1] Language expanding the scope of the BSA to intelligence or counter-intelligence activities to protect against international terrorism was added by section 358 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001, Public Law 107–56.

[2] 31 U.S.C. 5318(g) was added to the BSA by section 1517 of the Annunzio-Wylie Anti-Money Laundering Act, Title XV of the Housing and Community Development Act of 1992, Public Law 102–550; it was expanded by section 403 of the Money Laundering Suppression Act of 1994, Title IV of the Riegle Community Development and Regulatory Improvement Act of 1994, Public Law 103–325, to require designation of a single government recipient for reports of suspicious transactions.

[3] This designation does not preclude the authority of supervisory agencies to require financial institutions to submit other reports to the same agency or another agency ''pursuant to any other applicable provision of law.'' 31 U.S.C. 5318(g)(4)(C).

[4] *See* 31 CFR 103.11(uu).

[5] *See* 65 FR 13683 (March 14, 2000). Banks, thrift institutions, and credit unions have been subject to the suspicious transaction reporting requirement since April 1, 1996, pursuant to regulations issued concurrently by FinCEN and the federal bank supervisors (the Board of Governors of the Federal Reserve System (''Federal Reserve''), the Office of the Comptroller of the Currency (''OCC''), the Federal Deposit Insurance Corporation (''FDIC''), the Office of Thrift Supervision (''OTS''), and the National Credit Union Administration (''NCUA'')). *See* 31 CFR 103.18 (FinCEN); 12 CFR 208.62 (Federal Reserve Board); 12 CFR 21.11 (OCC); 12 CFR 353.3 (FDIC); 12 CFR 563.180 (OTS); and 12 CFR 748.1 (NCUA). On July 1, 2002, FinCEN published a final rule, found at 31 CFR 103.19, requiring broker-dealers to file reports of suspicious transactions beginning after December 30, 2002. *See* 67 FR 44048. On September 26, 2002, FinCEN published a final rule, found at 31 CFR 103.21, requiring casinos and card clubs to file reports of suspicious transactions. *See* 67 FR 60722.

activities appropriate for the particular customer or type of customer as to have no reasonable explanation.

Although the rule does not require the filing of multiple reports of suspicious activity by both a money services businesses and its agent with respect to the same reportable transaction, the obligation to identify and report suspicious transactions rests with each money services business involved in a particular transaction.

In accordance with paragraph 103.20(b) of the MSB SAR rule, money services businesses must report a suspicious transaction within 30 days after the money services business becomes aware of the suspicious transaction, by completing a Suspicious Activity Report-MSB (''SAR–MSB''). FinCEN published for comment on July 25, 2002, a draft SAR–MSB, which is now final and available for use.[6] FinCEN has made special provision for situations requiring immediate attention (*e.g.*, where delay in reporting might hinder law enforcement's ability to fully investigate the activity), in which case money services businesses are immediately to notify, by telephone, the appropriate law enforcement authority in addition to filing a SAR–MSB. Reports filed under the terms of the MSB SAR rule are lodged in a central database. Information contained in the database is made available electronically to federal and state law enforcement and regulatory agencies, to enhance their ability to fight financial crime and terrorism.

Paragraph 103.20(c) of the MSB SAR rule requires money services businesses to maintain copies of each filed SAR–MSB for five years. In addition, money services businesses must collect and maintain for five years supporting documentation relating to each SAR–MSB and make such documentation available to law enforcement and regulatory agencies upon request.

Paragraph 103.20(d) of the MSB SAR rule incorporates the terms of 31 U.S.C. 5318(g)(2) and (g)(3), and specifically prohibits persons filing reports in compliance with the MSB SAR rule (or voluntary reports of suspicious transactions) from disclosing, except to appropriate law enforcement and regulatory agencies, that a report has been prepared or filed. The paragraph also restates the BSA's broad protection from liability for making reports of suspicious transactions (whether such reports are required by the MSB SAR rule or made voluntarily), and for declining to disclose the fact of such reporting. The regulatory provisions do not extend the scope of either the statutory prohibition or the statutory protection; however, because FinCEN recognizes the importance of these statutory provisions in the overall effort to encourage meaningful reports of suspicious transactions and to protect the legitimate privacy expectations of those who may be named in such reports, they are repeated in the rule to remind compliance officers and others of their existence.

Paragraph 103.20(e) of the MSB SAR rule provides that compliance with the MSB SAR rule will be audited by the Department of the Treasury through FinCEN or its delegee. Failure to comply with the rule may constitute a violation of the BSA regulations, which may subject non-complying money services businesses to enforcement action under the BSA.

As originally promulgated, the MSB SAR rule only applied to certain categories of money services businesses including issuers, sellers, and redeemers (for monetary value) of traveler's checks and money orders, money transmitters, and the United States Postal Service.[7] The original MSB SAR rule did not apply to either check cashers or to currency dealers/exchangers. This rulemaking is based on FinCEN's determination that it is now appropriate to extend to currency dealers and exchangers the requirement to report suspicious transactions. FinCEN has determined that such reports will have a high degree of usefulness in criminal, tax, and regulatory investigations and proceedings, and in the conduct of intelligence and counter-intelligence activities, including analysis, to protect against international terrorism.

C. Importance of Suspicious Transaction Reporting in Treasury's Counter Money-Laundering Program

The Congressional authorization of reporting of suspicious transactions recognizes two basic points that are central to Treasury's counter-money laundering and counter-financial crime programs. First, to realize full use of their ill-gotten gains, money launderers at some point must turn to financial institutions, either initially to conceal their illegal funds, or eventually to recycle those funds back into the economy. Second, the employees and officers of those institutions are often more likely than government officials to have a sense as to which transactions appear to lack commercial justification or otherwise cannot be explained as constituting a legitimate use of the financial institution's products and services.

The importance of extending suspicious transaction reporting to all relevant financial institutions, including non-bank financial institutions, derives from the concentrated scrutiny to which banks have been subject with respect to money laundering. This attention, combined with the cooperation that banks have given to law enforcement agencies and banking regulators to root out money laundering, has made it far more difficult than in the past to pass large amounts of cash directly into the nation's banks unnoticed. As it has become increasingly difficult to launder large amounts of cash through banks, criminals have turned to non-bank financial institutions in their attempts to launder funds. Indeed, many non-bank financial institutions have come to recognize the increased pressure that money launderers have placed upon their operations and the need for innovative programs of training and monitoring necessary to counter that pressure.

The reporting of suspicious transactions is also recognized as essential to an effective counter-money laundering program in the international consensus on the prevention and detection of money laundering. One of the central recommendations of the Financial Action Task Force Against Money Laundering (''FATF'') is that:

> If financial institutions suspect that funds stem from a criminal activity, they should be required to report promptly their suspicions to the competent authorities.

Financial Action Task Force Annual Report (June 28, 1996),[8] Annex 1

[6] *See* 67 FR 48704 (July 25, 2002). The SAR[1] MSB and advice on how to complete it can be viewed on FinCEN's Web site (*http://www.fincen.gov*) under the categories of ''What's New'' and ''Regulatory.''

[7] The rule required money services businesses described in 31 CFR 103.11(uu)(3) (the money services business category that includes issuers of traveler's checks, money orders, or stored value), 103.11(uu)(4) (sellers or redeemers of traveler's checks, money orders, or stored value), 103.11(uu)(5) (money transmitters), and 103.11(uu)(6) (the United States Postal Service) to file reports of suspicious activity. Given the infancy of the use of stored value products in the United States at the time of issuance of the final rule, issuers, sellers, and redeemers of stored value were explicitly carved out of the final MSB SAR rule. *See* 31 CFR 103.20(a)(5).

[8] FATF is an inter-governmental body whose purpose is development and promotion of policies to combat money laundering. Originally created by the G–7 nations, its membership now includes Argentina, Australia, Austria, Belgium, Brazil, Canada, Denmark, Finland, France, Germany, Greece, Hong Kong, Iceland, Ireland, Italy, Japan, Luxembourg, Mexico, the Kingdom of the Netherlands, New Zealand, Norway, Portugal, Singapore, Spain, Sweden, Switzerland, Turkey, the United Kingdom, and the United States, as well as the European Commission and the Gulf Cooperation Council.

(Recommendation 15). The recommendation applies equally to banks and non-banks.[9]

Extending counter-money laundering controls to ''non-traditional'' financial institutions, not simply to banks, is necessary both to ensure fair competition in the marketplace and because non-bank providers of financial services as well as depository institutions are an attractive mechanism for, and are threatened by, money launderers. *See, e.g., Financial Action Task Force Annual Report, supra,* Annex 1 (Recommendation 8). For example, the international consensus is that currency dealers and exchangers are vulnerable to abuse not only by money launderers but also by those wishing to finance terrorist activity. On October 31, 2001, FATF issued its *Special Recommendations on Terrorist Financing.* Special Recommendation Four provides that:

> [i]f financial institutions, or other businesses or entities subject to anti-money laundering obligations, suspect or have reasonable grounds to suspect that funds are linked or related to, or are to be used for terrorism, terrorist acts or by terrorist organisations, they should be required to report promptly their suspicions to the competent authorities.

For purposes of FATF's Special Recommendation Four, the term ''financial institutions'' is intended to refer to both banks and non-bank financial institutions including, among other non-bank financial institutions, bureaux de change.[10] On December 4, 2001, the European Parliament and the Council of the European Union issued Directive 2001/97/EC amending *Directive on Prevention of the Use of the Financial System for the Purpose of Money Laundering* for the purpose of, among other things, reinforcing that anti-money laundering provisions should apply to currency exchange offices.

II. Notice of Proposed Rulemaking

The final rule contained in this document is based on the notice of proposed rulemaking published October 17, 2002 (the ''Notice'') (67 FR 64075). The Notice proposed the following amendments to the MSB SAR rule found at 31 CFR 103.20: (1) Adding currency dealers and exchangers to the list of money services businesses required to report suspicious transactions to the Department of the Treasury under 31 CFR 103.20, (2) adding a fourth reporting category to the suspicious transaction reporting rule applicable to money services businesses, and (3) adding to the rule the telephone number for FinCEN's Financial Institutions Hotline (1–866–556–3974).

The comment period for the Notice ended on December 16, 2002. FinCEN received one comment letter, submitted by a trade association of community banks. The commenter discussed the importance of ensuring adequate scrutiny of MSBs for compliance with the requirement to report suspicious activity, and advised that FinCEN should monitor for evidence of money laundering activity through check cashers in order to determine whether to extend the suspicious transaction reporting requirement to such entities. FinCEN is committed to ensuring fairness in examining for, and enforcing, compliance with BSA regulations, and will continue to review whether it is appropriate to extend the suspicious activity reporting requirement to other categories of money services businesses not currently subject to the rule.

III. Section-by-Section Analysis

In light of the fact that FinCEN did not receive any comments directly dealing with the language contained in the Notice, the format and terms of the final rule are consistent with the format and terms of the rule proposed in the Notice.

A. 103.20(a)—General

Paragraph 103.20(a)(1) generally sets forth the requirement that certain money services businesses, including currency dealers and exchangers,[11] issuers, sellers, and redeemers of traveler's checks and money orders, and money transmitters, report suspicious transactions to the Department of the Treasury. It should be noted that a money services business is subject to suspicious transaction reporting only with respect to transactions that involve or relate to the business activities described in 103.11(uu)(1), (3), (4), (5), or (6). Thus, for example, a currency dealer or exchanger (a money services business described in 103.11(uu)(1)) that is also a check casher (a money services business described in 103.11(uu)(2)) would not be required to report under the MSB SAR rule with respect to its check cashing activities in general, although it would be required to report check cashing activity that was part of a series of transactions that led to, for example, a suspicious currency exchange.

B. 103.20(a)(2)—Reportable Transactions

This document amends the MSB SAR rule by adding a fourth reporting category, described at 31 CFR 103.20(a)(2)(iv), for transactions involving use of the money services business to facilitate criminal activity. The addition of a fourth category of reportable transactions to the rule is intended to ensure that transactions involving legally-derived funds that the money services business suspects are being used for a criminal purpose, such as terrorist financing, are reported under the rule.[12] The addition of this reporting category is not intended to effect a substantive change in the rule. Rather, the fourth category has been added to make explicit that transactions being carried out for the purpose of conducting illegal activities, whether or not funded from illegal activities, must be reported under the rule.

C. 103.20(b)(3)—Filing Instructions

This document amends paragraph 103.20(b)(3) to include FinCEN's Financial Institution Hotline (1–866–556–3974) for use by financial institutions wishing voluntarily to report to law enforcement suspicious transactions that may relate to terrorist activity. Money services businesses reporting suspicious activity by calling the Financial Institutions Hotline must still file a timely SAR–MSB to the extent required by 31 CFR 103.20.

[9] This recommendation revises the original recommendation, issued in 1990, that required institutions to be either ''*permitted or* required'' to make such reports. (Emphasis supplied.) The revised recommendation reflects the international consensus that a mandatory suspicious transaction reporting system is essential to an effective national counter-money laundering program and to the success of efforts of financial institutions themselves to prevent and detect the use of their services or facilities by money launderers and others engaged in financial crime.

[10] *See Guidance Notes for the Special Recommendations on Terrorist Financing and the Self-Assessment Questionnaire,* Special Recommendation Four, paragraph 19 (March 27, 2002). FATF defines ''bureaux de change'' as ''institutions which carry out retail foreign exchange operations.'' *See also Financial Action Task Force Annual Report, supra,* Annex 1 (Interpretive Note to Recommendations 8 and 9 (Bureaux de Change)).

[11] The terms currency ''dealer'' and ''exchanger'' in 31 CFR 103.11(uu)(1) were intended to be interchangeable to ensure that the regulation captured the same type of activity whether denominated as exchanging or dealing—the physical exchange of currency for retail customers.

[12] The fourth reporting category has been added to the suspicious activity reporting rules promulgated since the passage of the USA PATRIOT ACT to make this point clear. *See* 31 CFR 103.19 and 103.21.

D. 103.19—Reports by Brokers or Dealers in Securities of Suspicious Transactions

Section 103.19 instructs broker and dealers in securities to report suspicious transactions using a ''Suspicious Activity Report—Brokers or Dealers in Securities'' (SAR–BD) form. Because the name of the form has been changed to ''Suspicious Activity Report by the Securities and Futures Industries'' (SAR–SF), section 103.19 is being amended to reflect the new name of the form.

IV. Regulatory Flexibility Act

FinCEN certifies that this final regulation will not have a significant economic impact on a substantial number of small entities. The average currency exchange is approximately $300, an amount which is substantially below the $2,000 threshold that triggers reporting under the amendments to 31 CFR 103.20. Thus, FinCEN believes the rule will not have a significant economic burden on small entities.

V. Executive Order 12866

The Department of the Treasury has determined that this final rule is not a significant regulatory action under Executive Order 12866.

VI. Paperwork Reduction Act

The collection of information contained in this final regulation has been approved by the Office of Management and Budget (''OMB'') in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control number 1506–0015. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

The collection of information in this final rule is in 31 CFR 103.20(b)(3) and (c). This information is required to be provided pursuant to 31 U.S.C. 5318(g) and 31 CFR 103.20. This information will be used by law enforcement agencies in the enforcement of criminal and regulatory laws. The collection of information is mandatory. The likely recordkeepers are businesses.

The estimated average recordkeeping burden associated with the collection of information in this final rule is 20 minutes per recordkeeper. The burden estimate relates to the recordkeeping requirement contained in the final rule. The reporting burden of 31 CFR 103.20 will be reflected in the burden of the SAR–MSB form. FinCEN anticipates that the final rule will result in an annual filing of a total of 3,100 SAR–MSB forms. This result is an estimate, based on a projection of the size and volume of the industry.

Comments concerning the accuracy of this burden estimate should be directed to the Financial Crimes Enforcement Network, Department of the Treasury, Post Office Box 39, Vienna, VA 22183, and to the Office of Management and Budget, Attn: Joseph F. Lackey, Jr., Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

List of Subjects in 31 CFR Part 103

Authority delegations (Government agencies), Banks and banking, Currency, Investigations, Law enforcement, Reporting and recordkeeping requirements.

Amendments to the Regulations

For the reasons set forth above in the preamble, 31 CFR Part 103 is amended as follows:

PART 103—FINANCIAL RECORDKEEPING AND REPORTING OF CURRENCY AND FOREIGN TRANSACTIONS

1. The authority citation for part 103 continues to read as follows:

Authority: 12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–-314, 5316–5332; title III, secs. 314, 352, Pub. L. 107–56, 115 Stat. 307.

2. In Subpart B, amend §§ 103.19(b)(1), (b)(2), (b)(3), (c)(1), (d), and (e) by removing the word ''SAR–BD'' each place it occurs and adding in its place the word ''SAR–S–F.''

3. In Subpart B, amend § 103.20 as follows:

a. Revise the first sentence of paragraph (a)(1),

b. Add new paragraph (a)(2)(iv), and

c. Add a new sentence to the end of paragraph (b)(3).

The additions and revisions read as follows:

§ 103.20 Reports by money services businesses of suspicious transactions.

(a) *General.* (1) Every money services business, described in § 103.11(uu) (1), (3), (4), (5), or (6), shall file with the Treasury Department, to the extent and in the manner required by this section, a report of any suspicious transaction relevant to a possible violation of law or regulation. * * *

(2) * * *

(iv) Involves use of the money services business to facilitate criminal activity.

* * * * *

(b) * * *

(3) * * * Money services businesses wishing voluntarily to report suspicious transactions that may relate to terrorist activity may call FinCEN's Financial Institutions Hotline at 1–866–556–3974 in addition to filing timely a SAR–MSB if required by this section.

* * * * *

Dated: January 31, 2003.

James F. Sloan,

Director, Financial Crimes Enforcement Network.

[FR Doc. 03–3112 Filed 2–7–03; 8:45 am]

BILLING CODE 4810–02–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

RIN–0720–AA52

TRICARE Program; Double Coverage; Third-Party Recoveries

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: This final rule implements section 711 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999, as amended by section 716(c)(2) of the National Defense Authorization Act for Fiscal Year 2000, which allows the Secretary of Defense to authorize certain TRICARE claims to be paid, even though other health insurance may be primary payer, with authority to collect from the other health insurance (third-party payer) the TRICARE costs incurred on behalf of the beneficiary.

DATES: This final rule is effective March 12, 2003.

ADDRESSES: TRICARE Management Activity (TMA), Office of General Counsel, 16401 East Centretech Parkway, Aurora, CO 80011–9043.

FOR FURTHER INFORMATION CONTACT: Stephen Isaacson Medical Benefits and Reimbursement Systems, TMA, (303)–676–3572.

SUPPLEMENTARY INFORMATION:

I. Summary of Final Rule Provisions

This final rule changes the TRICARE ''double coverage'' provisions authorizing payment of claims when a third-party payer, other than a primary medical insurer, is involved rather than delaying TRICARE payments pending payment by the third-party payer. In addition, this final rule changes the TRICARE ''third-party recoveries'' provisions incorporating the authority to collect from third-party payers the TRICARE costs for health care services incurred on behalf of the patient/

beneficiary. The radar should refer to the proposed rule that was published on October 19, 1999 (64 FR 56283), for more detailed information regarding these changes.

II. Public Comments

We provided a 60-day comment period on the proposed rule. We received no public comments.

III. Changes in the Final Rule

We have made changes in the final rule based on section 716 of the National Defense Authorization Act for Fiscal Year 2000, Pub. L. 106–65, which was passed subsequent to preparation of the proposed rule. We have removed paragraph (c)(2)(iii) of Section 199.8 as originally set forth in the proposed rule. The essence of this change is to remove the proposed requirement for contractors to assign the government any rights to seek recovery from third-party payers. Based on the section 716 of the National Defense Authorization Act for Fiscal Year 2000, it is clear that the government, rather than the contractor, has the authority to collect amounts paid on behalf of TRICARE beneficiaries for which there is a liable third party.

Based on Section 8118 of the Fiscal Year 2000 Department of Defense Appropriations Act, we also have eliminated the change to paragraph (d)(2) of Section 199.8 established Medicaid as primary payer to TRICARE under the case management program that is set out in Part 199.4(i). As a result, TRICARE will continue to be primary to Medicaid in all situations including case management.

IV. Regulatory Procedures

Executive Order (EO) 12866 requires that a comprehensive regulatory impact analysis be performed on any economically significant regulatory action, defined as one that would result in an annual effect of $100 million or more on the national economy or which would have other substantial impacts.

The Regulatory Flexibility Act (RFA) requires that each Federal agency prepare, and make available for public comment, a regulatory flexibility analysis when the agency issues a regulation that would have a significant impact on a substantial number of small entities.

This rule has been designated as significant rule and has been reviewed by the Office of Management and Budget as required under the provisions of E.O. 12866. In addition, we certify that this final rule will not significantly affect a substantial number of small entities.

Paperwork Reduction Act.

This final rule, as written, imposes no burden as defined by the Paperwork Reduction Act of 1995. If, however, any program implemented under this final rule causes such a burden to be imposed, approval will be sought of the Office of Management and Budget in accordance with the Act prior to implementation.

List of Subjects in 32 CFR Part 199

Claims, Handicapped, Health insurance, and Military personnel.

Accordingly, 32 CFR Part 199 is amended as follows:

PART 199—[AMENDED]

1. The authority citation for Part 199 continues to read as follows:

Authority: 5 U.S.C. 301; 10 U.S.C. Chapter 55.

2. Section 199.2(b) is amended by adding new definitions *automobile liability insurance, no-fault insurance,* and *third-party payer* in alphabetical order:

§ 199.2 Definitions.

* * * * *

Automobile liability insurance. Automobile liability insurance means insurance against legal liability for health and medical expenses resulting from personal injuries arising from operation of a motor vehicle. Automobile liability insurance includes:

(1) Circumstances in which liability benefits are paid to an injured party only when the insured party's tortious acts are the cause of the injuries; and

(2) Uninsured and underinsured coverage, in which there is a third-party tortfeasor who caused the injuries (i.e., benefits are not paid on a no-fault basis), but the insured party is not the tortfeasor.

* * * * *

No-fault insurance. No-fault insurance means an insurance contract providing compensation for health and medical expenses relating to personal injury arising from the operation of a motor vehicle in which the compensation is not premised on whom may have been responsible for causing such injury. No-fault insurance includes personal injury protection and medical payments benefits in cases involving personal injuries resulting from operation of a motor vehicle.

* * * * *

Third-party payer. Third-payer means an entity that provides an insurance, medical service, or health plan by contract or agreement, including an automobile liability insurance or no fault insurance carrier and a worker's compensation program or plan, and any other plan or program (*e.g.,* homeowners insurance) that is designed to provide compensation or coverage for expenses incurred by a beneficiary for medical services or supplies. For purposes of the definition of ''third-party payer,'' an insurance, medical service, or health plan includes a preferred provider organization, an insurance plan described as Medicare supplemental insurance, and a personal injury protection plan or medical payments benefit plan for personal injuries resulting from the operation of a motor vehicle.

Note: TRICARE is secondary payer to all third-party payers. Under limited circumstances described in § 199.8(c)(2) of this part, TRICARE payment may be authorized to be paid in advance of adjudication of the claim by certain third-party payers. TRICARE advance payments will not be made when a third-party provider is determined to be a primary medical insurer under § 199.8(c)(3) of this part.''

* * * * *

3. Section 199.8 is amended by revising paragraphs (a), (c)(1), and (d)(3), redesignating paragraphs (b)(3), (c)(2) and (c)(3) as paragraphs (b)(4), (c)(4) and (c)(5), respectively, and adding new paragraphs (b)(3), (c)(2), and (c)(3) to read as follows:

§ 199.8 Double coverage.

(a) *Introduction.* (1) In enacting TRICARE legislation, Congress clearly has intended that TRICARE be the secondary payer to all health benefit, insurance and third-party payer plans. 10 U.S.C. 1079(j)(1) specifically provides that a benefit may not be paid under a plan (CHAMPUS) covered by this section in the case of a person enrolled in, or covered by, any other insurance, medical service, or health plan, including any plan offered by a third-party payer (as defined in 10 U.S.C. 1095(h)(1)) to the extent that the benefit is also a benefit under the other plan, except in the case of a plan administered under title XIX of the Social Security Act (42 U.S.C. 1396 *et seq.*).

(2) The provision in paragraph (a)(1) of this section is made applicable specifically to retired members, dependents, and survivors by 10 U.S.C. 1086(g). The underlying intent, in addition to preventing waste of Federal resources, is to ensure that TRICARE beneficiaries receive maximum benefits while ensuring that the combined payments of TRICARE and other health and insurance plans do not exceed the total charges.

* * * * *

(b) * * *

(3) *Third-party payer.* A third-party payer means an entity that provides an insurance, medical service, or health plan by contract or agreement, including an automobile liability insurance or no-fault insurance carrier and a workers' compensation program or plan, and any other plan or program (e.g., homeowners insurance, etc.) that is designed to provide compensation or coverage for expenses incurred by a beneficiary for medical services or supplies. For purposes of the definition of ''third-party payer,'' an insurance, medical service or health plan includes a preferred provider organization, an insurance plan described as Medicare supplemental insurance, and a personal injury protection plan or medical payments benefit plan for personal injuries resulting from the operation of a motor vehicle.

* * * * *

(c) * * *

(1) *TRICARE last pay.* For any claim that involves a double coverage plan as defined in paragraph (b) of this section, TRICARE shall be last pay *except* as may be authorized by the Director, TRICARE Management Activity, or a designee, pursuant to paragraph (c)(2) of this section. That is, TRICARE benefits may not be extended until all other double coverage plans have adjudicated the claim.

(2) *TRICARE advance payment.* The Director, TRICARE Management Activity, or a designee, may authorize payment of a claim in advance of adjudication of the claim by a double coverage plan and recover, under § 199.12, the TRICARE costs of health care incurred on behalf of the covered beneficiary under the following conditions:

(i) The claim is submitted for health care services furnished to a covered beneficiary; and,

(ii) The claim is identified as involving services for which a third-party payer, other than a primary medical insurer, may be liable.

(3) *Primary medical insurer.* For purposes of paragraph (c)(2) of this section, a ''primary medical insurer'' is an insurance plan, medical service or health plan, or a third-party payer under this section, the primary or sole purpose of which is to provide or pay for health care services, supplies, or equipment. The term ''primary medical insurer'' does not include automobile liability insurance, no-fault insurance, workers' compensation program or plan, homeowners insurance, or any other similar third-party payer as may be designated by the Director, TRICARE Management Activity, or a designee, in any policy guidance or instructions issued in implementation of this Part.

* * * * *

(d) * * *

(3) *TRICARE and Workers' Compensation.* TRICARE benefits are not payable for a work-related illness or injury that is covered under a workers' compensation program. Pursuant to paragraph (c)(2) of this section, however, the Director, TRICARE Management Activity, or a designee, may authorize payment of a claim involving a work-related illness or injury covered under a workers' compensation program in advance of adjudication and payment of the workers' compensation claim and then recover, under § 199.12, the TRICARE costs of health care incurred on behalf of the covered beneficiary.

* * * * *

4. Section 199.12 is revised as follows:

§ 199.12 Third party recoveries.

(a) *General.* This section deals with the right of the United States to recover from third-parties the costs of medical care furnished to or paid on behalf of TRICARE beneficiaries. These third-parties may be individuals or entities that are liable for tort damages to the injured TRICARE beneficiary or a liability insurance carrier covering the individual or entity. These third-parties may also include other entities who are primarily responsible to pay for the medical care provided to the injured beneficiary by reason of an insurance policy, workers' compensation program or other source of primary payment.

Authority. (1) *Third-party payers.* This part implements the provisions of 10 U.S.C. 1095b which, in general, allow the Secretary of Defense to authorize certain TRICARE claims to be paid, even though a third-party payer may be primary payer, with authority to collect from the third-party payer the TRICARE costs incurred on behalf of the beneficiary. (See § 199.2 for definition of ''third-party payer.'') Therefore, 10 U.S.C. 1095b establishes the statutory obligation of third-party payers to reimburse the United States the costs incurred on behalf of TRICARE beneficiaries who are also covered by the third-party payer's plan.

(2) *Federal Medical Care Recovery Act.* (i) *In general.* In many cases covered by this section, the United States has a right to collect under both 10 U.S.C. 1095b and the Federal Medical Care Recovery Act (FMCRA), Public Law 87–693 (42 U.S.C. 2651 *et. seq.*). In such cases, the authority is concurrent and the United States may pursue collection under both statutory authorities.

(ii) *Cases involving tort liability.* In cases in which the right of the United States to collect from an automobile liability insurance carrier is premised on establishing some tort liability on some third person, matters regarding the determination of such tort liability shall be governed by the same substantive standards as would be applied under the FMCRA including reliance on state law for determinations regarding tort liability. In addition, the provisions of 28 CFR part 43 (Department of Justice regulations pertaining to the FMCRA) shall apply to claims made under the concurrent authority of the FMCRA and 10 U.S.C. 1095b. All other matters and procedures concerning the right of the United States to collect shall, if a claim is made under the concurrent authority of the FMCRA and this section, be governed by 10 U.S.C. 1095b and this part.

(c) *Appealability.* This section describes the procedures to be followed in the assertion and collection of third-party recovery claims in favor of the United States arising from the operation of TRICARE. Actions taken under this section are not initial determinations for the purpose of the appeal procedures of § 199.10 of this part. However, the proper exercise of the right to appeal benefit or provider status determinations under the procedures set forth in § 199.10 may affect the processing of federal claims arising under this section. Those appeal procedures afford a TRICARE beneficiary or participating provider an opportunity for administrative appellate review in cases in which benefits have been denied and in which there is a significant factual dispute. For example, a TRICARE contractor may deny payment for services that are determined to be excluded as TRICARE benefits because they are found to be not medically necessary. In that event the TRICARE contractor will offer an administrative appeal as provided in § 199.10 of this part on the medical necessity issue raised by the adverse benefit determination. If the care in question results from an accidental injury and if the appeal results in a reversal of the initial determination to deny the benefit, a third-party recovery claim may arise as a result of the appeal decision to pay the benefit. However, in no case is the decision to initiate such a claim itself appealable under § 199.10.

(d) *Statutory obligation of third-party payer to pay.* (1) *Basic Rule.* Pursuant to 10 U.S.C. 1095b, when the Secretary of Defense authorizes certain TRICARE claims to be paid, even though a third-party payer may be primary payer (as specified under § 199.8(c)(2)), the right to collect from a third-party payer the TRICARE costs incurred on behalf of the beneficiary is the same as exists for the United States to collect from third-party payers the cost of care provided by a facility of the uniformed services under 10 U.S.C. 1095 and part 220 of this title. Therefore the obligation of a third-party payer to pay is to the same extent that the beneficiary would be eligible to receive reimbursement or indemnification from the third-party payer if the beneficiary were to incur the costs on the beneficiary's own behalf.

(2) *Application of cost shares.* If the third-party payer's plan includes a requirement for a deductible or copayment by the beneficiary of the plan, then the amount the United States may collect from the third-party payer is the cost of care incurred on behalf of the beneficiary less the appropriate deductible or copayment amount.

(3) *Claim from the United States exclusive.* The only way for a third-party payer to satisfy its obligation under 10 U.S.C. 1095b is to pay the United States or authorized representative of the United States. Payment by a third-party payer to the beneficiary does not satisfy 10 U.S.C. 1095b.

(4) *Assignment of benefits not necessary.* The obligation of the third-party to pay is not dependent upon the beneficiary executing an assignment of benefits to the United States.

(e) *Exclusions impermissible.* (1) *Statutory requirement.* With the same right to collect from third-party payers as exists under 10 U.S.C. 1095(b), no provision of any third-party payer's plan having the effect of excluding from coverage or limiting payment for certain care if that care is provided or paid by the United States shall operate to prevent collection by the United States.

(2) *Regulatory application.* No provision of any third-party payer's plan or program purporting to have the effect of excluding or limiting payment for certain care that would not be given such effect under the standards established in part 220 of this title to implement 10 U.S.C. 1095 shall operate to exclude or limit payment under 10 U.S.C. 1095b or this section.

(f) *Records available.* When requested, TRICARE contractors or other representatives of the United States shall make available to representatives of any third-party payer from which the United States seeks payment under 10 U.S.C. 1095b, for inspection and review, appropriate health care records (or copies of such records) of individuals for whose care payment is sought. Appropriate records which will be made available are records which document that the TRICARE costs incurred on behalf of beneficiaries which are the subject of the claims for payment under 10 U.S.C. 1095b were incurred as claimed and the health care service were provided in a manner consistent with permissible terms and conditions of the third-party payer's plan. This is the sole purpose for which patient care records will be made available. Records not needed for this purpose will not be made available.

(g) *Remedies.* Pursuant to 10 U.S.C. 1095b, when the Director, TRICARE Management Activity, or a designee, authorizes certain TRICARE claims to be paid, even though a third-party payer may be primary payer, the right to collect from a third-party payer the TRICARE costs incurred on behalf of the beneficiary is the same as exists for the United States to collect from third-party payers the cost of care provided by a facility of the uniformed services under 10 U.S.C. 1095.

(1) This includes the authority under 10 U.S.C. 1095(e)(1) for the United States to institute and prosecute legal proceedings against a third-party payer to enforce a right of the United States under 10 u.S.C. 1095b and this section.

(2) This also includes the authority under 10 u.S.C. 1095(e)(2) for an authorized representative of the United States to compromise, settle or waive a claim of the United States under 10 U.S.C. 1095b and this section.

(3) The authorities provided by the Federal Claims Collection Act of 1966, as amended (31 U.S.C. 3701 *et. seq.*) and any implementing regulations (including § 199.11) regarding collection of indebtedness due the United States shall also be available to effect collections pursuant to 10 U.S.C. 1095b and this section.

(h) *Obligations of beneficiaries.* To insure the expeditious and efficient processing of third-party payer claims, any person furnished care and treatment under TRICARE, his or her guardian, personal representative, counsel, estate, dependents or survivors shall be required:

(1) To provide information regarding coverage by a third-party payer plan and/or the circumstances surrounding an injury to the patient as a conditional precedent of the processing of a TRICARE claim involving possible third-party payer coverage.

(2) To furnish such additional information as may be requested concerning the circumstances giving rise to the injury or disease for which care and treatment are being given and concerning any action instituted or to be instituted by or against a third person; and,

(3) To cooperate in the prosecution of all claims and actions by the United States against such third person.

(i) *Reponsibility for recovery.* The Director, TRICARE Management Activity, or a designee, is responsible for insuring that TRICARE claims arising under 10 U.S.C. 1095b and this section (including claims involving the FMCRA) are properly referred to and coordinated with designated claims authorities of the uniformed services who shall assert and recover TRICARE costs incurred on behalf of beneficiaries. Generally, claims arising under this section will be processed as follows:

(1) *Identification and referral.* In most cases where civilian providers provide medical care and payment for such care has been by a TRICARE contractor, initial identification of potential third-party payers will be by the TRICARE contractor. In such cases, the TRICARE contractor is responsible for conducting a preliminary investigation and referring the case to designated appropriate claims authorities of the Uniformed Services.

(2) *Processing TRICARE claims.* When the TRICARE contractor initially identifies a claim as involving a potential third-party payer, it shall request additional information concerning the circumstances of the injury or disease and/or the identify of any potential third-party payer from the beneficiary or other responsible party unless adequate information is submitted with the claim. The TRICARE claim will be suspended and no payment issued pending receipt of the requested information. If the requested information is not received, the claim will be denied. A TRICARE beneficiary may expedite the processing of his or her TRICARE claim by submitting appropriate information with the first claim for treatment of an accidental injury. Third-party payer information normally is required only once concerning any single accidental injury on episode of care. Once the third-party payer information pertaining to a single incident or episode of care is received, subsequent claims associated with the same incident or episode of care may be processed to payment in the usual manner. If, however, the requested third-party payer information is not received, subsequent claims involving the same incident or episode of care will be suspended or denied as stated above.

(3) *Ascertaining total potential liability.* It is essential that the appropriate claims responsible for

asserting the claim against the third-party payer recive from the TRICARE contractor a report of all amounts expended by the United States for care resulting from the incident upon which potential liability in the third party is based (including amounts paid by TRICARE for both inpatient and outpatient care). Prior to assertion and final settlement of a claim, it will be necessary for the responsible claims authority to secure from the TRICARE contractor updated information to insure that all amounts expended under TRICARE are included in the government's claim. It is equally important that information on future medical payments be obtained through the investigative process and included as a part of the government's claim. No TRICARE-related claim will be settled, compromised or waived without full consideration being given to the possible future medical payment aspects of the individual case.

(j) *Reporting requirements.* Pursuant to 10 U.S.C. 1079a, all refunds and other amounts collected in the administration of TRICARE shall be credited to the appropriation available for that program for the fiscal year in which the refund or amount is collected. Therefore, the Department of Defense requires an annual report stating the number and dollar amount of claims asserted against, and the number and dollar amount of recoveries from third-party payers (including FMCRA recoveries) arising from the operation of the TRICARE. To facilitate the preparation of this report and to maintain program integrity, the following reporting requirements are established:

(1) *TRICARE contractors.* Each TRICARE contractor shall submit on or before January 31 of each year an annual report to the Director, TRICARE Management Activity, or a designee, covering the 12 months of the previous calendar year. This report shall contain, as a minimum, the number and total dollar of cases of potential third-party payer/FMCRA liability referred to uniformed services claims authorities for further investigation and collection. These figures are to be itemized by the states and uniformed services to which the cases are referred.

(2) *Uniformed Services.* Each uniformed service will submit to the Director, TRICARE Management Activity, or designee, an annual report covering the 12 calendar months of the previous year, setting forth, as a minimum, the number and total dollar amount of cases involving TRICARE payments received from TRICARE contractors, the number and dollar amount of cases involving TRICARE payments received from other sources, and the number and dollar amount of claims actually asserted against, and the dollar amount of recoveries from, third-payment payers or under the FMCRA. The report, itemized by state and foreign claims jurisdictions, shall be provided no later than February 28 of each year.

(3) *Implementation of the reporting requirements.* The Director, TRICARE Management Activity, or a designee shall issue guidance for implementation of the reporting requirements prescribed by this section.

Dated: February 4, 2003.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–3159 Filed 2–7–03; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD07–03–018]

Drawbridge Operation Regulations; Ashley River, Charleston, SC

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Seventh Coast Guard District, has approved a temporary deviation from the regulations governing the operation of the Ashley River (US 17) drawbridges across the Ashley River, miles 2.4 and 2.5, Charleston, South Carolina. This temporary deviation allows the bridge owner or operator to keep all spans of the Ashley River drawbridges in the down or closed position for 16 days.

DATES: This temporary rule is effective from 7 a.m. on January 31, 2003 to 7 a.m. on February 15, 2003.

ADDRESSES: Material received from the public as well as documents indicated in this preamble as being available in the docket are part of docket [CGD07–03–018] and are available for inspection or copying at Commander (obr), Seventh Coast Guard District, Room 432, 909 S.E. 1st Avenue, Miami, Florida 33131–3050, between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Lieberum, Project Manager, Seventh Coast Guard District, Bridge Branch at (305) 415–6744.

SUPPLEMENTARY INFORMATION: The Ashley River (US 17) drawbridges across the Ashley River, miles 2.4 and 2.5 are double bascule leaf bridges, with vertical clearances of 14.0 feet at mean high water and horizontal clearances of 100 feet between fenders. The existing operating regulation in 33 CFR 117.915 requires the bridges to open on signal; except that, from 7 a.m. to 9 a.m. Monday through Friday and 4 p.m. to 7 p.m. daily, the draws need be opened only if at least 12 hours notice is given. The draws of either bridge shall open as soon as possible for the passage of vessels in an emergency involving danger to life or property.

On December 30, 2002, The Industrial Company (TLC), representing the South Carolina Department of Transportation, requested a temporary change to the operation of the Ashley River (US 17) drawbridges to allow them to complete the rehabilitation to the structure.

This deviation will have a limited impact on navigation as there is only one marina west of the structure and they have been notified by the contractor of the possible closure of the structure. Mariners have the opportunity to relocate the vessels that would require a bridge opening to one of the marinas located east of the structure.

The Commander, Seventh Coast Guard District has granted a temporary deviation from the operating requirements listed in 33 CFR 117.915 to allow The Industrial Company, representing the owner, to facilitate repairs to the bridge spans. Under this temporary deviation, the Ashley River drawbridges may remain closed to navigation from 7 a.m. on January 31, 2003, to 7 a.m. on February 15, 2003.

Dated: January 29, 2003.

Greg Shapley,

Chief, Bridge Administration, Seventh Coast Guard District.

[FR Doc. 03–3264 Filed 2–7–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 19

RIN 2900–AK62

Appeals Regulations: Title for Members of the Board of Veterans' Appeals

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends the Department of Veterans Affairs' (VA) Appeals Regulations to provide that a Member of the Board of Veterans'

Appeals may also be known as a Veterans Law Judge.

DATES: *Effective Date:* February 10, 2003.

FOR FURTHER INFORMATION CONTACT: Steven L. Keller, Senior Deputy Vice Chairman, Board of Veterans' Appeals, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202–565–5978).

SUPPLEMENTARY INFORMATION: The Board of Veterans' Appeals (Board) is an administrative body that decides appeals from denials of claims for veterans' benefits, after an opportunity for a hearing. There are currently 55 Board ''members,'' who decide 35,000 to 40,000 such appeals per year.

On March 6, 2001, we published a notice of proposed rulemaking (NPRM) that would provide that a Member of the Board may also be known as a Veterans Law Judge. 66 FR 13463. The comment period ended May 7, 2001. We received 38 comments, 33 from individuals and 5 from organizations. Of the commenters, 27 supported the proposal, while 11 opposed it.

We have carefully considered all the comments. We also considered a letter from six veterans service organizations sent prior to the beginning of the comment period, but which we referenced in our NPRM. 66 FR at 13463. We have grouped the objections into seven general categories and discuss them below.

For the reasons described, we have decided to adopt the proposed regulation as a final regulation.

1. *The title is detrimental or of no benefit to veterans.*

Several individuals and one organization expressed concern that the change would ''intimidate'' veterans. Some organizations opined that the change would provide no benefit to veterans. At the same time, several individuals said they did not find the title intimidating. In addition, several individuals said that they found the current title of ''member'' confusing and thought that ''judge'' would be a clarification.

We do not agree that the change will intimidate veterans or provide them no benefit.

The chief reason we proposed this rule was to recognize Board members for what they are: Judges. It is a title that is widely used in the executive branch for thousands of people who hold hearings and decide appeals. For example—

If a person disagrees with a Social Security decision, his appeal is heard by a Social Security Administration (SSA) employee called a judge.

If he disagrees with that decision, the appeal is heard by another SSA employee called a judge.

If a federal employee appeals a personnel decision, her appeal is heard by a Merit Systems Protection Board employee called a judge.

If a person has a complaint about discrimination, her case is heard by an Equal Employment Opportunity Commission employee called a judge.

We also know that most veterans who come before the Board do so once in their life. As we said in our NPRM, ''member'' doesn't really tell the veteran much about what the member does. 66 FR at 13463. The term ''judge'' is simply more accurate.

The purpose of the Board is to give veterans an independent review of denied claims. Our experience is that veterans are most concerned that the person deciding their appeals is not part of the regional office, which initially decided their claims. We think that the term ''judge'' does a better job of letting veterans know what the Board member is and—almost as importantly—what the Board member is not.

VA actually used the term ''Veterans Law Judge'' for three or four months late in the year 2000 and early in 2001. *See* 65 FR 55461 (Sep. 14, 2000) (final rule establishing title), *rescinded*, 66 FR 13437 (Mar. 6, 2001). We received no complaints that our Board members had become more aloof or the hearings more formal, nor did we receive any complaints that any veterans were intimidated by the title.

Accordingly, we make no changes based on these comments.

2. *Board Members are not Administrative Law Judges.*

Some commenters objected to the rule because Board Members are not Administrative Law Judges (ALJs).

While this is certainly true, its apparent relevance to this rulemaking is that only ALJs are permitted to carry the title ''judge.'' We noted in our NPRM that there are many types of non-ALJ adjudicators in the executive branch who carry the title ''judge.'' We also note that individuals appointed to the judiciary under Articles I and III of the Constitution—*i.e.,* adjudicators in the various Federal courts—carry the title ''judge,'' and none of them are ALJs.

The point is that the term ''judge'' describes what the individual does, not whether he or she is subject to particular procedures established by the Office of Personnel Management (OPM). In addition, we have not proposed to refer to Board members as ''administrative law judges,'' but rather as ''Veterans Law Judges.''

Accordingly, we make no changes based on these comments.

3. *The selection process for Board Members is different from the selection process for ALJs.*

Some commenters objected to the rule because the Board member selection process is different from the ALJ selection process.

The processes are different. Like the ALJ process, however, the Board member process selects experienced attorneys and is based on merit principles. The following table illustrates the similarities and differences in the selection processes:

	Administrative Law Judge	Member, Board of Veterans' Appeals
General qualifications	Attorney with 7 years experience in Administrative Law or Litigation in a government setting. (OPM, non-regulatory requirement).	In practice, 7–10 years experience in the field of veterans' law. (VA, non-regulatory requirement)
Attorney status	Active member of the bar. (OPM, non-regulatory requirement).	Member in good standing of the bar of a State. 38 U.S.C. 7101A(a)(2).
Experience requirement	2 years experience equivalent to a GS–13 or 1 year experience as a GS–14 or GS–15. (OPM, non-regulatory requirement).	Generally, two or more years at the GS–14 or GS–15 level. (VA, non-regulatory requirement)
Skills	Knowledge of administrative procedures, rules of evidence, and trial practices; analytical ability; oral communications ability and judicial temperament; writing ability; organizational skills. (OPM, non-regulatory requirement).	Knowledge of veterans' law and of specialized areas of medicine and law; ability to conduct hearings; ability to manage attorneys; ability to participate in training activities. Additional qualification factors. (VA, non-regulatory requirement)

	Administrative Law Judge	Member, Board of Veterans' Appeals
Application process	Pass an OPM-administered 4-part exam .... NOTE: The "4-part exam" consists of (1) the application form; (2) a written test; (3) an interview; and (4) a reference check. See 5 CFR 930.203(c) and (d).	Application; interview; reference check; review of substantive work as attorney (generally as counsel at Board). (VA, non-regulatory requirement)

The similarity of the processes' results is illustrated by the fact that Board members have moved rather easily from the Board to the ALJ ranks. Indeed, a primary impetus for equalization of Board member pay with ALJ pay in 1994 (Pub. L. 103–446) was the loss of Board members to the ALJ ranks. *See, e.g.*, 140 Cong. Rec. H11349, H11350 (daily ed., Oct. 7, 1994) (statement of Rep. Montgomery in connection with passage of H.R. 4386) (pay equity provision for Board members "is intended to insure that Members of the Board not feel compelled to pursue ALJ positions, but rather to remain at the Board, where their expertise is badly needed"); 140 Cong. Rec. H7088, H7092 (daily ed. Aug. 8, 1994) (statement of Rep. Montgomery in connection with passage of H.R. 4088) ("current pay disparity between Board members and Administrative Law Judges is producing a migration of Board members to the Social Security Administration and other federal agencies"); 140 Cong. Rec. S9457, S9458 (daily ed., Jul. 21, 1994) (statement of Sen. Akaka on introduction of S. 2305) ("Since July 1993, nine Board members have been selected to be ALJ's. This figure represents 16 percent of the 55 attorneys who have held Board member positions since last July.").

Accordingly, we make no changes based on these comments.

4. *Board Members do not have the same "decisional independence" as ALJs.*

Some commenters objected to the rule because Board members do not have the same "decisional independence" as ALJs. Indeed, one commenter went so far as to state that "the BVA simply cannot provide appellants the assurance of impartiality that accompanies judicial status."

Not only are such comments, frankly, insulting to Board members, they are wrong as a matter of law.

In the first place, we believe there is no evidence that Board members are anything but impartial. We are unaware of a single instance in the 70-year history of the Board in which the differences between ALJs and Board members, as articulated by the commenters, resulted in a charge—much less a proven allegation—that any Board member at any time was other than impartial. The commenters, while referring generally to the administrative control of the Board Chairman over the Board, 38 U.S.C. 7101(a), have not directed us to any such instance. We categorically deny both that VA management has attempted to influence the result of Board members' decisions and that Board members do not provide appellants the assurance of impartiality.

We can, however, point to at least one situation in which a group of ALJs claimed that their agency—which has administrative control over them—was putting pressure on the ALJs to make fewer claimant-friendly decisions. In the early 1980s, the Department of Health and Human Services (HHS) instituted what came to be known as the "Bellmon Review Program," which allegedly put pressure on ALJs within SSA to make fewer reversals of denials of Social Security benefits. Although HHS eventually modified its stance, the ALJs claimed that their independence was threatened, notwithstanding their immunity from performance reviews and the fact that they were selected for ALJ positions by OPM, not HHS. *See generally Ass'n of Admin. Law Judges, Inc.* v. *Heckler,* 594 F. Supp. 1132 (D.D.C. 1984).

Second, the term "decisional independence" is not a clearly defined concept, and the commenters did not attempt to define the phrase. In *Ass'n of Admin. L. Judges v. Heckler, supra,* an action challenging the "Bellmon Review," the court found that ALJs had a "qualified" right to decisional independence. In that case—in which ALJs alleged that their decisional independence was threatened—the court noted that, while ALJs at SSA are exempt from the performance appraisals to which other civil service employees are subject (Board members, who are subject to the statutory performance review provisions of 38 U.S.C. 7101A, are also exempt from performance appraisals) and that they are entitled to rates of pay not set by the agency in which they serve (as are Board members), they are nevertheless subject to performance-related adverse personnel actions (as are Board members) and are entirely subject to their agency's right, under the administrative appeals process, to impose the agency's views on law and policy (as Board members are not). The court concluded that "the ALJ's right to decisional independence is qualified." 594 F. Supp. at 1141. *See also Goodman* v. *Svahn,* 614 F. Supp. 726, 728–29 (D.D.C. 1985) (imposition of case production quotas on SSA ALJ did not violate ALJ's rights under the Administrative Procedure Act, the Civil Rights Act of 1861, or the Fifth Amendment); *cf. Sannier* v. *MSPB,* 931 F.2d 856, 858–59 (Fed. Cir. 1991) (where SSA ALJ did not allege that increased pressure to process more cases affected his decisionmaking, ALJ's claim of constructive removal was properly dismissed by MSPB for lack of subject matter jurisdiction); *Nash* v. *Bowen,* 869 F.2d 675, 680 (2d Cir.) (setting of reasonable production goals for SSA ALJs is not an infringement of decisional independence), *cert. denied,* 493 U.S. 813 (1989).

As noted, the court in *Ass'n of Admin. Law Judges, Inc.* v. *Heckler, supra,* found that the power of the agency to alter ALJ decisions contributed to the "qualified" nature of ALJ decisional independence. Of all adjudicators within the Executive Branch, there may be none whose decisions are more independent than those of members of the Board of Veterans' Appeals. Unlike ALJs, Board members make decisions that generally can be altered only by a Federal court. (The exceptions are (1) reconsideration under 38 U.S.C. 7104, which can be ordered by the Board chairman, but results only in the vacation of the decision and reassignment to a panel of members, and (2) reversal on the grounds of clear and unmistakable error under 38 U.S.C. 7111, which can be ordered only by a Board member.) An ALJ decision, on the other hand, generally is not directly appealable to any court. Instead, it is, in effect, a preliminary decision subject to summary reversal by the agency head. *Compare Nash* v. *Bowen,* 869 F.2d at 680 (ALJs' authority to decide Social Security appeals is delegated by the Secretary and Secretary is ultimately authorized to make the final decision), *with* 38 U.S.C. 7104(a) (decisions on appeals to Secretary are made by the Board of Veterans' Appeals).

Neither ALJs nor Board members are subject to the normal performance reviews applicable to most civil service employees. However, Board members are subject to periodic recertification following peer review, 38 U.S.C. 7101A, while no comparable review process applies to ALJs. Nevertheless, ALJs are subject to dismissal for inadequate performance. *See SSA* v. *Goodman,* 19 M.S.P.R. 321 (1984). The concept of rating judicial performance, particularly an approach involving peer review, is hardly a novel concept. *See, e.g.*, J. Lubbers, The Federal Administrative Judiciary: Establishing an Appropriate System of Performance Evaluation for ALJs, 7 Admin. L.J. Am. U. 589, 606–11 (1994) (citing state and local judicial systems employing such a process). We do not find this distinction between Board members and ALJs to be meaningful with respect to whether Board members should be called ''Veterans Law Judges.''

Finally, we can perceive no reason—and none was advanced by the commenters—to conclude that the selection and tenure characteristics associated with ALJs determine whether an individual may be called a judge. As we pointed out in our NPRM, there are within the Federal service ''administrative judges'' who are subject to the same selection and review criteria as most civil servants. In addition, individuals appointed to the judiciary under Article I of the Constitution—Tax Court judges, judges of the United States Court of Appeals for Veterans Claims—are selected by a political process, have fixed terms, and yet are called ''judges.'' Finally, Federal District Court Judges and judges of the United States Courts of Appeals are called judges even though they are selected through a political process and have much more job security than ALJs. In sum, we are not persuaded by this argument.

For all these reasons, we find no substance to the commenters' claims that there is a substantive difference between the decisional independence of ALJs and that of Board members, nor do we believe that it is the characteristics of ALJ selection and tenure that determine whether an individual may be called ''judge.'' Accordingly, we make no change in the regulation based on those comments.

5. *The statute calls them ''members,'' not ''judges.''*

Some commenters suggest that, because the statute refers to ''members'' of the Board, VA is barred from using the title ''judge.'' The commenters provided no authority for this proposition, and we could find none.

We do, however, note that it is not uncommon for members of a statutorily-created board to be defined in regulations as ''judges.'' *See* 41 U.S.C. 607 (Boards of Contract Appeals) *and, e.g.*, 38 CFR 1.781 (BCA members at VA ''are designated Administrative Judges'') *and* 7 CFR 24.2 (BCA members at Department of Agriculture are ''designated Administrative Judges''); 31 U.S.C. 751 (Personnel Appeals Board at the General Accounting Office) *and* 4 CFR 28.3 (when designated to preside over a hearing, Board members are titled ''administrative judges''); 33 U.S.C. 921 (Benefits Review Board at the Department of Labor) *and* 20 CFR 801.2(3) & (12) (Board members are ''officially entitled'' administrative appeals judges); 42 U.S.C. 2241 (Atomic Safety and Licensing Boards) *and* 10 CFR 1.15 (members of these boards are called ''administrative judges''); *cf.* 43 CFR 4.2(a) (members of various appellate boards created by Department of the Interior are ''designated Administrative Judges'').

We make no change based on these comments.

6. *Congress failed to enact a measure providing for a similar title.*

One commenter suggested that Congress had ''rejected'' changing the title of Board member, apparently concluding that such inaction prevented VA from doing so.

In the first place, the Congress did not ''reject'' the change. Indeed, the only Congressional action of record was adoption by the House of Representatives of a similar provision in the 105th Congress.

In 1998, the House of Representatives passed a bill which, among many other things, would have provided that Board members (other than the Chairman) could also be known as ''veterans administrative law judges.'' H.R. 4110, 105th Cong. § 407(a); *see* 144 Cong. Rec. H6885 (daily ed. Aug. 3, 1998) (debate on passage of H.R. 4110 as reported by the Committee on Veterans' Affairs). That provision was never subject to a vote in the Senate. However, along with other provisions in H.R. 4110, § 407(a) was not adopted by the Senate in the compromise leading to the final version of the bill. *See* 144 Cong. Rec. H10374 (daily ed. Oct. 10, 1998) (debate on final passage of H.R. 4110).

Second, it is well-settled that the intent of the legislature is indicated by its action, not by its failure to act. *See, e.g., FDA* v. *Brown & Williamson Tobacco Corp.,* 529 U.S. 120, 155 (2000) (in case challenging authority of FDA to regulate tobacco, Court would ''not rely on Congress' failure to act—its consideration and rejection of bills that would have given the FDA this authority—'' in reaching conclusion that FDA lacked authority); *United States* v. *Southwestern Cable Co.,* 392 U.S. 157, 170 (1968) (failed requests for legislative action do not prove agency did not already possess authority); *see generally* 73 Am. Jur.2d, Statutes § 84 (2001). In this case, not only was there, at best, a ''failure to act'' by the Congress with respect to the title of Board members, but, to the extent it did act, part of the Congress—the House—passed the measure.

We make no changes to the regulation based on this comment.

7. *The title ''judge'' would destroy the non-adversarial nature of the VA appellate process.*

Two commenters objected to the title ''judge'' because it would adversely affect the informal, non-adversarial nature of VA's appellate process. In addition to the fact that the commenters offer only their opinions in support of this proposition, it is relevant to note that the 973 administrative law ''judges'' at SSA—approximately 75% of all federal ALJs—administer justice in ''an informal, nonadversary manner.'' 20 CFR 404.900(b) (rules relating to SSA administrative review process).

We make no changes based on these comments.

Administrative Procedure Act

This final rule concerns agency organization, procedure or practice and is not a substantive rule. Accordingly, it is exempt from the delayed effective date provision of 5 U.S.C. 553.

Paperwork Reduction Act

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3520).

Executive Order 12866

This document has been reviewed by the Office of Management and Budget under Executive Order 12866.

Regulatory Flexibility Act

The Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This final rule only affects members of the Board of Veterans' Appeals and not small entities. Therefore, pursuant to 5 U.S.C. 605(b), this final rule is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

Unfunded Mandates

The Unfunded Mandates Reform Act requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector of $100 million or more in any given year. This rule would have no consequential effect on State, local, or tribal governments.

List of Subjects in 38 CFR Part 19

Administrative practice and procedure, Claims, Veterans.

Approved: November 18, 2002.

Anthony J. Principi,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 19 is amended as set forth below:

PART 19—BOARD OF VETERANS' APPEALS: APPEALS REGULATIONS

1. The authority citation for part 19 continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

2. The section heading and section 19.2 are revised to read as follows:

§ 19.2 Composition of the Board; Titles.

(a) The Board consists of a Chairman, Vice Chairman, Deputy Vice Chairmen, Members and professional, administrative, clerical and stenographic personnel. Deputy Vice Chairmen are Members of the Board who are appointed to that office by the Secretary upon the recommendation of the Chairman.

(b) A member of the Board (other than the Chairman) may also be known as a Veterans Law Judge. An individual designated as an acting member pursuant to 38 U.S.C. 7101(c)(1) may also be known as an acting Veterans Law Judge.

(**Authority:** 38 U.S.C. 501(a), 512, 7101(a))

[FR Doc. 03–3040 Filed 2–7–03; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 36

RIN 2900–AL23

Loan Guaranty: Implementation of Public Law 107–103.

AGENCY: Department of Veterans Affairs.

ACTION: Interim final rule.

SUMMARY: The Department of Veterans Affairs (VA) amends its loan guaranty regulations to implement sections 401 through 404 of Pub. L. 107–103, the Veterans Education and Benefits Expansion Act of 2001. VA is incorporating into the regulations the following statutory changes: an increase in the maximum amount of loan guaranty entitlement from $50,750 to $60,000, a liberalization of the requirements regarding Memoranda of Understanding between VA and Native American Tribes in order for their members to qualify for direct housing loans to Native American veterans, a revision of the requirement that loan instruments used in connection with VA guaranteed loans contain a statement that such loans are not assumable without prior VA approval, and an increase in the specially adapted housing grant from $43,000 to $48,000 and in the special housing adaptations grant from $8,250 to $9,250.

DATES: *Effective Date:* This interim final rule is effective February 10, 2003. Comments must be received on or before April 11, 2003.

ADDRESSES: Mail or hand deliver written comments to: Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Avenue, NW., Room 1154, Washington, DC 20420; or fax comments to (202) 273–9289; or e-mail comments to *OGCRegulations@mail.va.gov.* Comments should indicate that they are submitted in response to ''RIN 2900–AL23.'' All written comments received will be available for public inspection at the above address in the Office of Regulations Management, Room 1158, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays).

FOR FURTHER INFORMATION CONTACT: Mr. Robert D. Finneran, Assistant Director for Policy and Valuation (262), Loan Guaranty Service, Veterans Benefits Administration, Department of Veterans Affairs, Washington, DC 20420, (202) 273–7368.

SUPPLEMENTARY INFORMATION: Under 38 U.S.C. chapter 37, VA guarantees loans made by private lenders to veterans for the purchase, construction, and refinancing of homes owned and occupied by veterans. VA also makes direct housing loans to Native American veterans living on tribal trust land.

In addition, under 38 U.S.C. chapter 21, VA provides grants to certain severely-disabled veterans with qualifying permanent and total service-connected disabilities to make adaptations to their homes that are necessary because of the nature of the veterans' disabilities.

VA is amending its loan guaranty regulations (38 CFR part 36) to implement changes to those housing programs made by sections 401 through 404 of Pub. L. 107–103.

Section 401 of Pub. L. 107–103 increased the maximum guaranty on a housing loan made to eligible veterans from $50,750 to $60,000. VA is making conforming changes to § 36.4302 to reflect the new statutory maximum.

Prior to enactment of Pub. L. 107–103, 38 U.S.C. 3762 required that, before VA could make a housing loan under 38 U.S.C. chapter 37, subchapter V to a Native American veteran, the tribal organization having jurisdiction over the veteran must have entered into a Memorandum of Understanding (MOU) with the Secretary of Veterans Affairs spelling out the conditions under which the program would operate on its trust lands. Section 402(b) of Pub. L. 107–103 allows VA to make loans under this program to a Native American veteran if the tribe has entered into an MOU with another Federal agency with regard to loans to Native Americans residing on tribal lands, so long as the Secretary of VA determines that the MOU substantially complies with VA's home loan requirements. VA is amending 38 CFR 36.4527 to reflect this change. The amendment requires that the MOU between the Tribe and the other Federal agency complies with the requirements now set forth in paragraph (b) of § 36.4527.

The goal of this statutory change and the new rule is to expand the number of Native American tribes participating in the VA Native American veteran direct loan program, ultimately increasing the number of Native American veterans obtaining housing loans from VA. VA is aware that many tribes do not wish to go through the process of negotiating an MOU with VA.

VA has participated in inter-agency task forces seeking to increase the availability of housing loans on Native American tribal trust land. These include the Executive Branch's One-Stop Mortgage Initiative during the Clinton Administration, and a task force created by the Federal National Mortgage Association (FNMA, commonly known as ''Fannie Mae''). VA believes that the standards for an MOU contained in paragraph (b) of § 36.4527 mirror requirements by other Federal agencies. Therefore, an MOU between a tribe and another Federal agency would likely meet the requirements in paragraph (b).

VA specifically solicits comments from the public as to whether those requirements for an MOU between another Federal agency and a Native American tribe to be acceptable to VA are reasonable, or if they should be further modified.

Section 403 of Pub. L. 107–103 liberalized the requirement that loan instruments used in connection with VA guaranteed loans contain a statement that such loans are not assumable without prior VA approval. Prior to enactment of Pub. L. 107–103, 38 U.S.C. 3714(d) required that the following notice, in all capital letters, using a font at least 2½ times larger than the regular type, be placed on the first page of the mortgage or deed of trust as well as any other instrument evidencing the loan, ''This Loan is not Assumable Without the Approval of the Department of Veterans Affairs or its Authorized Agent.'' As modified by section 403 of Pub. L. 107–103, section 3714(d) requires that such notice appear conspicuously on at least one of the instruments evidencing the loan or the security therefor.

VA is therefore amending § 36.4308 to reflect this change. Under the new rule, the required language must appear on one of the following instruments: The note, the mortgage, the deed of trust, or a VA-specific rider to any of those documents. This language must appear in a typeface which is the larger of either twice the largest font size contained elsewhere in the body of the instrument or 18 points. VA is eliminating the current requirements that this notice be on the first page of the document and that it be in all capital letters.

The former statute imposed a significant paperwork burden on lenders, and made it virtually impossible for lenders to use uniform loan instruments available for FHA and conventional loans for VA guaranteed loans. VA believes the requirements in the new rule will provide adequate notice to borrowers regarding the restrictions on assumption of VA guaranteed loans while significantly reducing the administrative burden the former statute placed on lenders. Because VA believes lenders should be able to take immediate advantage of the new liberalization, VA is issuing this amendment as an interim-final rule. VA is soliciting comments from the public regarding whether the standards for such notice are adequate to provide reasonable notice to veteran borrowers without imposing an undue burden on our industry partners. VA will carefully consider comments received and, if warranted, further amend the standards for the required notice.

Section 404 of Pub. L. 107–103 increased the maximum grants VA may make under 38 U.S.C. chapter 21, to certain veterans with total and permanent service-connected disabilities to assist those veterans in adapting housing to their special needs. The maximum Specially Adapted Housing grant authorized by 38 U.S.C. 2101(a) for veterans who have lost or lost the use of both lower extremities or have lost or lost the use of one lower extremity and also are blind in both eyes or have residuals of organic disease or injury so as to preclude locomotion without the aid of braces, crutches, canes, or a wheelchair was increased from $43,000 to $48,000. The maximum Special Housing Adaptations grant authorized by 38 U.S.C. 2101(b) to veterans with blindness in both eyes or whose disability includes the anatomical loss or loss of use of both hands was increased from $8,250 to $9,250. VA is making conforming changes to § 36.4404 to reflect these statutory increases.

Administrative Procedure Act

These amendments are published without regard to the notice and comment and delayed effective date provisions of 5 U.S.C. 533 since amendments to §§ 36.4302, 36.4527, and 36. 4404 merely conform existing rules to statutory amendments or, in the case of the amendment to § 36. 4308, liberalize existing requirements pursuant to new statutory authority. We find that compliance with those provisions of 5 U.S.C. 533 would be impracticable, unnecessary, and contrary to the public interest.

Unfunded Mandates

The Unfunded Mandates Reform Act requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in expenditure by State, local, or tribal governments, in the aggregate, or by the private sector of $100 million or more in any given year. This rule would have no consequential effect on State or local governments. With regard to the impact of this rule, on tribal governments, the amendments regarding MOUs with tribal governments are, as explained above, a liberalization of existing requirements. This rule may eliminate the necessity of some tribes having to negotiate a separate MOU with the Secretary. Accordingly, this rule may result in some cost saving to tribal government. Once VA approves making loans to members of a particular tribe, the loans would be funded by VA. Although the Indian housing authority may have some involvement in the servicing of some of these loans, any costs should be insignificant. Based on the current low loan volume in the Native American Veteran Direct Loan Program, VA anticipates making fewer than a dozen loans a year to American Indian tribal members.

Paperwork Reduction Act

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3520).

Executive Order 12866

This document has been reviewed by the Office of Management and Budget under Executive Order 12866.

Regulatory Flexibility Act

The Secretary hereby certifies that this interim final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. The amendments regarding increases in the guaranty amount and specially adapted housing grant merely conform the regulations to statutory increases. The amendments regarding MOUs with tribal governments will not impact private entities. The liberalization of the notice requirements regarding loan assumptions should enable lenders to use standard loan instruments (such as note, mortgage, or deed of trust) they now use with regard to FHA, FNMA and FHLMC loans on VA loan transactions. Any costs to small entities originating VA loans with respect to these new requirements for loan instruments should be minimal. Therefore, pursuant to 5 U.S.C. 605(b), this interim rule is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

The Catalog of Federal Domestic Assistance Program numbers are 64.114 and 64.119.

List of Subjects in 38 CFR Part 36

Condominiums, Flood insurance, Housing, Indians, Individuals with disabilities, Loan programs-housing and community development, Loan programs-Indians, Loan programs-veterans, Manufactured homes, Mortgage insurance, Reporting and recordkeeping requirements, Veterans.

Approved: December 4, 2002.

Anthony J. Principi,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 36 is amended as set forth below.

PART 36—LOAN GUARANTY

1. The authority citation for part 36 continues to read as follows:

Authority: 38 U.S.C. 501, 3701–3704, 3707, 3710–3714, 3719, 3720, 3729, 3762, unless otherwise noted.

2. In § 36.4302, paragraphs (a)(4), (e)(1)(i), (e)(2)(i), (e)(3), and the authority citation at the end of paragraph (e)(3) are revised to read as follows:

§ 36.4302 Computation of guaranties or insurance credits.

(a) * * *

(4) The lesser of $60,000 or 25 percent of the original principal loan amount where the loan amount exceeds $144,000 and the loan is for the purchase or construction of a home or the purchase of a condominium unit.

* * * * *

(e) * * *

(1) * * *

(i) Entitlement may be increased by up to $24,000 if the loan amount exceeds $144,000 and the loan is for purchase or construction of a home or purchase of a condominium; and

(2) * * *

(i) Entitlement may be increased by up to $24,000 if the loan amount exceeds $144,000 and the loan is for purchase or construction of a home or purchase of a condominium: and

* * * * *

(3) If a veteran previously secured a manufactured home loan under 38 U.S.C. 3712, the amount of entitlement used for that loan is subtracted from $36,000. The sum remaining is the amount of available entitlement for home loans and the sum remaining may be increased by up to $24,000 if the loan amount exceeds $144,000 and the loan is for purchase or construction of a home or purchase of a condominium. To determine the amount of entitlement available for manufactured home loans processed under 38 U.S.C. 3712, the amount of entitlement previously used for that purpose is subtracted from $20,000. The sum remaining is the amount of available entitlement for use for manufactured home loan purposes under 38 U.S.C. 3712.

(Authority: 38 U.S.C. 3703)

3. Section 36.4308 is amended by removing the first authority citation at the end of the section, and by revising paragraph (c)(2) to read as follows:

§ 36.4308 Transfer of title by borrower or maturity by demand or acceleration.

* * * * *

(c) * * *

(2) With respect to each such loan at least one of the instruments used in the transaction shall contain the following statement: ''This loan is not assumable without the approval of the Department of Veterans Affairs or its authorized agent.'' This statement must be:

(i) Printed in a font size which is the larger of:

(A) Two times the largest font size contained in the body of the instrument; or

(B) 18 points; and

(ii) Contained in at least one of the following:

(A) The note;

(B) The mortgage or deed of trust; or

(C) A rider to either the note, the mortgage, or the deed of trust.

Authority: (38 U.S.C.3714(d))

4. In § 36.4404, paragraph (a) introductory text, paragraph (b)(2), and the authority citation at the end of the section are revised to read as follows:

§ 36.4404 Computation of cost.

(a) *Computation of cost of housing unit.* Under section 2101(a) of chapter 21, for the purpose of computing the amount of benefits payable to a veteran-beneficiary, there may be included in the total cost to the veteran the following amount, not to exceed $48,000.

* * * * *

(b) * * *

(2) $9,250.

(Authority: 38 U.S.C. 2102)

5. Section 36.4527(a) is amended by:

A. In paragraph (a)(1), at the end of the paragraph, removing ''and'' and adding, in its place, ''or''.

B. Redesignating paragraph (a)(2) as paragraph (a)(3).

C. Adding a new paragraph (a)(2).

The addition reads as follows:

§ 36.4527 Direct housing loans to Native American veterans on trust lands.

(a) * * *

(2) The tribal organization that has jurisdiction over the veteran has entered into a memorandum of understanding with any department or agency of the United States with respect to such loans and the memorandum complies with the requirements of paragraph (b) of this section.

(Authority: 38 U.S.C. 3762(a))

[FR Doc. 03–3176 Filed 2–7–03; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[WV058–6024a; FRL–7442–1]

Approval and Promulgation of Air Quality Implementation Plans; West Virginia; Regulation To Prevent and Control Air Pollution From Combustion of Refuse

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve a revision to the West Virginia State Implementation Plan (SIP). The SIP revision amends a regulation to prevent and control air pollution from combustion of refuse. EPA is approving these revisions in accordance with the requirements of the Clean Air Act.

DATES: This rule is effective on April 11, 2003 without further notice, unless EPA receives adverse written comment by March 12, 2003. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments should be mailed to Kathleen Anderson, Air Quality Planning and Information Services Branch, 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 1301 Constitution Avenue, NW., Room B108, Washington, DC 20460; and West Virginia Department of Environmental Protection, Division of Air Quality, 7012 MacCorkle Avenue, SE., Charleston, WV 25304–2943.

FOR FURTHER INFORMATION CONTACT: Kathleen Anderson, (215) 814–2173, or by e-mail at *anderson.kathleen@epa.gov.* Please note that while questions may be posed via telephone and e-mail, formal comments must be submitted in writing, as indicated in the **ADDRESSES** section of this document.

SUPPLEMENTARY INFORMATION:

I. Background

On September 21, 2000 and on September 12, 2001, West Virginia submitted revisions to a regulation (45CSR6) to prevent and control air pollution from combustion of refuse as formal revisions to its State Implementation Plan (SIP). The first SIP revision went to public hearing on July 19, 1999 and became effective on August 31, 2000. This SIP revision modified and deleted certain definitions, updated opacity standards and clarified and expanded open burning requirements. The second SIP revision went to public hearing on August 14, 2000 and became effective on July 1, 2001. This SIP revision added requirements for air curtain incinerators and exempted certain temporary flares form permitting. Since the most recent of the two SIP revisions incorporates all of the changes from the earlier SIP revision, EPA will incorporate by reference the version of 45CSR6 submitted on September 12, 2001 into the SIP.

I. Summary of SIP Revision

(A) The following definitions were revised as follows: (1) Definitions of ''Commission,'' ''Ringelmann Smoke Chart,'' ''Construction and Demolition Wastes'' were deleted, (2) ''Incineration'' was modified to include thermal oxidizers and thermal catalytic oxidizers, (3) ''Director'' was modified to include persons delegated authority by the Director; (4) ''Open Burning'' was modified to include ''burn barrels,'' (5) ''Person'' was modified to include the State of West Virginia and the United States, (6) Definitions for ''Land Clearing Debris,'' Air Curtain Incinerator'', ''Clean Lumber,'' and ''Yard Waste'' were added.

(B) Restrictions on open burning were revised as follows: (1) Open burning is prohibited for any purpose unless specifically exempted in the regulation, (2) Open burning for fire training is exempt but must be conducted according to 45CSR15 and 40 CFR part 61, subpart M, (3) References to ''construction and demolition wastes'' were replaced with ''land clearing debris'' and the exemption for open burning of backyard wastes was removed, (4) Prior Director's approval for open burning of land clearing debris is required in all areas of the State, and (5) An exemption was added for open burning of propellent and explosive wastes, subject to 45CSR25.

(C) Emission Standards for incinerators were revised as follows: (1) Particulate matter emission standards were changed from a Ringelmann Chart reading to a measured percent opacity standard, (2) The regulations at 40 CFR part 60 subparts Eb, AAAA and CCCC for air curtain incinerators were incorporated by reference, restrictions were imposed on the types of wastes allowed to be burned in air curtain incinerators, permits for construction, operation and modification of air curtain incinerators are required and an exemption from permitting was given to temporary air curtain incinerators.

(D) Permit requirements were changed to require permits for the construction, modification and relocation of any incinerator as applicable in 45CSR13, 45CSR14 and 45CSR19 and temporary flares and flare stacks with potential emissions below stationary source or major modification thresholds are exempt from permitting.

(E) Stack testing must be conducted using 40 CFR part 60, appendix A, Method 5 or other EPA-approved equivalent method approved by the Director to perform stack testing for particulate matter.

(F) The following sections were added or deleted: (1) The section on delayed compliance orders was deleted, (2) A section titled ''Emergencies and Natural Disasters'' was added to exempt open burning activities resulting from incineration of vegetation, building debris and other non-hazardous debris from natural disasters, (3) A section titled ''Effect of the Rule'' was added to prohibit 45CSR6 from being used to allow or permit construction of a new incinerator in violation of other State regulation, and (4) A section titled ''Inconsistency Between Rules'' allows the Director to determine applicability of conflicting rules based on imposing the more stringent provisions.

These revisions strengthen the SIP by clarifying and updating definitions, updating opacity standards, requiring EPA-approved test methods, and clarifying and expanding open burning and incineration requirements.

III. Final Action

EPA is approving the revisions to 45CSR6, ''To Prevent and Control Air Pollution from Combustion of Refuse,'' submitted by West Virginia on September 12, 2001. EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comment. However, in the ''Proposed Rules'' section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on April 11, 2003 without further notice unless EPA receives adverse comment by March 12, 2003. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

IV. Regulatory Assessment Requirements

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 11, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action, to prevent and control air pollution for combustion of refuse in West Virginia, may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Dated: January 15, 2003.

James W. Newsom,

Acting Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart XX—West Virginia

2. Section 52.2520 is amended by adding paragraph (c)(51) to read as follows:

§ 52.2520 Identification of plan.

* * * * *

(c) * * *

(51) Revisions to the West Virginia's Regulations to prevent and control air pollution from combustion of refuse, submitted on September 12, 2001 by the West Virginia Division of Environmental Protection:

(i) Incorporation by reference.

(A) Letter of September 12, 2001 from the West Virginia Division of Environmental Protection.

(B) Revisions to Title 45, Series 6 (45CSR6), To Prevent and Control Air Pollution from Combustion of Refuse, effective July 1, 2001.

(ii) Additional Material.

(A) Letter of September 21, 2000 from the West Virginia Division of Environmental Protection to EPA transmitting the regulation to prevent and control air pollution from the combustion of refuse.

(B) Letter of January 26, 2001 from the West Virginia Division of Environmental Protection to EPA transmitting materials related to revisions of 45CSR6.

(C) Remainder of the State submittals pertaining to the revisions listed in paragraph (c)(51)(i) of this section.

[FR Doc. 03–2938 Filed 2–7–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[KY 125–2 –200308(c); FRL–7449–9]

Approval and Promulgation of Implementation Plans for Kentucky: Air Permit Regulations; Withdrawal of Direct Final Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of direct final rule.

SUMMARY: Due to adverse comment, EPA is withdrawing the direct final rule published December 30, 2002, (see 67 FR 79523) approving several revisions to the Kentucky State Implementation Plan. The revisions include separating Kentucky's air permits rule into several, smaller rules, and renumbering and rewriting these rules in plain English. EPA stated in the direct final rule that if EPA received adverse comment by January 29, 2003, the rule would be withdrawn and not take effect. EPA subsequently received adverse comment. EPA will address the comment in a subsequent final action based upon the proposed action also published on December 30, 2002 (see 67 FR 79543). EPA will not institute a second comment period on this action.

DATES: The direct final rule is withdrawn as of February 10, 2003.

FOR FURTHER INFORMATION CONTACT: Michele Notarianni, Air Planning Branch, U.S. Environmental Protection Agency Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960. (404/562–9031 (phone) or *notarianni.michele@epa.gov* (e-mail).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: January 30, 2003.

A. Stanley Meiburg,

Acting, Regional Administrator, Region 4.

[FR Doc. 03–3239 Filed 2–7–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[KY 139–200307(c); FRL–7449–8]

Approval and Promulgation of Implementation Plans for Kentucky: Source-Specific Revision for Lawson Mardon Packaging; Withdrawal of Direct Final Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of direct final rule.

SUMMARY: Due to adverse comment, EPA is withdrawing the direct final rule published December 18, 2002, (see 67 FR 77430) approving a source-specific revision to the State Implementation Plan of the Commonwealth of Kentucky.

This revision allows Lawson Mardon Packaging, USA, Corporation to have an alternative compliance averaging period of 30 days instead of the 24-hour averaging period specified by Kentucky air quality regulations. EPA stated in the direct final rule that if EPA received adverse comment by January 17, 2003, the rule would be withdrawn and not take effect. EPA subsequently received adverse comment. EPA will address the comment in a subsequent final action based upon the proposed action also published on December 18, 2002 (see 67 FR 77463). EPA will not institute a second comment period on this action.

DATES: The direct final rule is withdrawn as of February 10, 2003.

FOR FURTHER INFORMATION CONTACT: Michele Notarianni, Air Planning Branch, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. (404/562–9031 (phone) or *notarianni.michele@epa.gov* (e-mail).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: January 31, 2003.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 03–3237 Filed 2–7–03; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[NH–51–7175a; FRL –7447–7]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants: New Hampshire; Plan for Controlling MWC Emissions From Existing Municipal Waste Combustors

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The United States Environmental Protection Agency (EPA) approves the Sections 111(d)/129 State Plan submitted by the New Hampshire Department of Environmental Services (NH DES) on August 16, 2002. This State Plan is for implementing and enforcing provisions at least as protective as the federal Emission Guidelines (EGs) applicable to existing large and small Municipal Waste Combustion (MWC) units.

DATES: This rule is effective on April 11, 2003 without further notice unless EPA receives significant adverse comment by March 12, 2003. If EPA receives such comments, we will publish a timely withdrawl of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Comments must be submitted to Mr. Steven Rapp, Chief, Air Permits, Toxics & Indoors Programs Unit, Office of Ecosystem Protection, U.S. EPA, One Congress Street, Suite 1100 (CPA), Boston, Massachusetts 02114–2023. You may examine copies of materials relevant to this action during normal business hours, by appointment at the following locations:

Environmental Protection Agency-New England, Region 1, Air Permits, Toxics & Indoor Programs, Office of Ecosystem Protection, Suite 1100, One Congress Street, Boston, Massachusetts 02114–2023.

New Hampshire Department of Environmental Services, Air Resources Division, 6 Hazen Drive, P.O. Box 95, Concord, New Hampshire 03302–0095.

The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the day of the visit.

FOR FURTHER INFORMATION CONTACT: John Courcier at (617) 918–1659.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. What action is EPA taking today?
II. Why Does EPA Want To Regulate Air Emissions From MWCs?
III. When did EPA first publish these requirements?
IV. Who must comply with the requirements?
V. Are any sources exempt from the requirements?
VI. By what date must MWCs in New Hampshire achieve compliance?
VII. What happens if an MWC does not/cannot meet the requirements by the final compliance date?
VIII. What options are available to operators if they cannot achieve compliance within one year of the effective date of the State Plan?
IX. What Is a State Plan?
X. What did the state submit as part of its State Plan?
XI. Why Is EPA Approving New Hampshire's State Plan?
XII. Why does EPA need to approve State Plans?
XIII. Regulatory Assessment Requirements

I. What Action Is EPA Taking Today?

EPA is approving the above referenced State Plan which New Hampshire submitted on August 16, 2002 for the control of air emissions from existing large (units with an individual capacity greater than 250 tons per day) and small (units with an individual capacity of 250 tons per day or less) MWCs throughout the State.

EPA is publishing this approval action without prior proposal because the Agency views this as a noncontroversial action and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the State Plan should relevant adverse comments be filed. If EPA receives no significant, material, and adverse comments by March 12, 2003, this action will be effective April 11, 2003.

If EPA receives significant, material, and adverse comments by the above date, the Agency will withdraw this action before the effective date by publishing a subsequent document in the **Federal Register** that will withdraw this final action. EPA will address all public comments received in a subsequent final rule based on the parallel proposed rule published in today's **Federal Register**. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

II. Why Does EPA Want To Regulate Air Emissions From MWCs?

When burned, municipal solid wastes emit various air pollutants, including hydrochloric acid, dioxin/furan, toxic metals (lead, cadmium, and mercury) and particulate matter. Mercury is highly hazardous and is of particular concern because it persists in the environment and bioaccumulates through the food web. Serious developmental and adult effects in humans, primarily damage to the nervous system, have been associated with exposures to mercury. Harmful effects in wildlife have also been reported; these include nervous system damage and behavioral and reproductive deficits. Human and wildlife exposure to mercury occur mainly through eating of fish. When inhaled, mercury vapor attacks also the lung tissue and is a cumulative poison. Short-term exposure to mercury in certain forms can cause hallucinations and impair consciousness. Long-term exposure to mercury in certain forms can affect the central nervous system and cause kidney damage.

Exposure to particulate matter can aggravate existing respiratory and cardiovascular disease and increase risk of premature death. Hydrochloric acid is a clear colorless gas. Chronic exposure to hydrochloric acid has been reported to cause gastritis, chronic bronchitis, dermatitis, and photosensitization. Acute exposure to high levels of chlorine in humans may result in chest pain, vomiting, toxic pneumonitis, pulmonary edema, and death. At lower levels, chlorine is a potent irritant to the eyes, the upper respiratory tract, and lungs.

Exposure to dioxin and furan can cause skin disorders, cancer, and reproductive effects such as endometriosis. These pollutants can also affect the immune system.

III. When Did EPA First Publish These Requirements?

The EPA originally promulgated the EGs for large and small MWCs on December 19, 1995. However, the EGs for the small MWCs were vacated by the U.S. Court of Appeals for the District of Columbia Circuit in March 1997. In response to the Court's decision, EPA again proposed the small MWC emission guidelines on August 30, 1999. On December 19, 1995 and December 6, 2000, according to sections 111 and 129 of the Clean Air Act (Act), the EPA published the final form of the EGs applicable to existing large and small MWCs, respectively. The EGs are at 40 CFR part 60, subparts Cb (large MWCs) and BBBB (small MWCs). *See* 60 FR 65382 (large) and 65 FR 76378 (small) and the **Background** section.

IV. Who Must Comply With the Requirements?

All large MWCs that commenced construction before December 19, 1995, and all small MWCs that commenced construction on or before August 30, 1999 must comply with these requirements.

V. Are Any Sources Exempt From the Requirements?

The following incinerator source categories are exempt from the federal requirements for small MWCs:

(1) Small MWC units that combust less than 11 tons per day.

(2) Small power production facilities.

(3) Cogeneration facilities.

(4) MWC units that combust only tires.

(5) Hazardous waste combustion.

(6) Materials recovery units.

(7) Co-fired units.

(8) Plastics/rubber recycling units.

(9) Units that combust fuels made from products of plastics/rubber recycling plants.

(10) Cement kilns.

(11) Air curtain incinerators.

Please refer to 40 CFR 60.1555 for specific definitions of these incinerator source categories, and any recordkeeping or other requirements that still may need to be met.

VI. By What Date Must MWCs in New Hampshire Achieve Compliance?

All existing large MWCs must now be in compliance. The final compliance date for large MWCs was December 19, 2000. All existing small MWC units in the State of New Hampshire must comply with these requirements by December 6, 2005.

VII. What Happens If a Small MWC Does Not/Cannot Meet the Requirements by the Final Compliance Date?

Any existing small MWC that fails to meet the requirements by December 6, 2005 must shut down. The unit will not be allowed to start up until the owner/operator installs the controls necessary to meet the requirements.

VIII. What Options Are Available to Operators if They Cannot Achieve Compliance Within One Year of the Effective Date of the State Plan?

If a small MWC cannot achieve compliance within one year of the effective date of EPA approval of the State Plan, the operator must agree to meet certain increments of progress until they achieve compliance. The State Rule details the increments of progress for the affected small MWCs.

IX. What Is a State Plan?

Section 111(d) of the Act requires that pollutants controlled under NSPS must also be controlled at older sources in the same source category. Once an NSPS is issued, EPA then publishes an EG applicable to the control of the same pollutant from existing (designated) facilities. States with designated facilities must then develop State Plans to adopt the EGs into their body of regulations. States must also include in their State Plans other elements, such as inventories, legal authority, and public participation documentation, to demonstrate their ability to enforce the State Plans.

X. What Did the State Submit as Part of Its State Plan?

The State of New Hampshire submitted its sections 111(d)/129 State Plan to EPA for approval on August 16, 2002. The State adopted the EG requirements into the New Hampshire Code of Administrative Rules Env–A–3300, ''Municipal Waste Combustion'' on June 7, 2002. The State Plan contains:

1. A demonstration of the State's legal authority to implement the State Plan.

2. New Hampshire Rule CHAPTER Env–A–3300, ''Municipal Waste Combustion'' as the enforceable mechanism.

3. An inventory of the sources on pages 5 and 6 of the State Plan.

4. An emissions inventory on pages 6 and 7 of the State Plan.

5. Emission limits, at least as protective as the limits found under Subparts Cb and DDDD, that are contained in Env–A–3303. (Please note that the State's mercury limit of 0.028 ug/dscm is more stringent than EPA's EG.)

6. Provisions for compliance schedules that are contained in Env–A–3308.

7. Testing, monitoring, and inspection requirements that are contained in Env–A–3306.

8. Reporting and Recordkeeping requirements that are contained in Env–A–3307.

9. Operator training and qualification requirements that are contained in Env–A–3305.

10. A record of the public notice and hearing requirements that are contained in Appendices E and F of the State Plan.

11. Provisions for state progress reports to EPA that are contained on page 10 of the State Plan.

12. A final compliance date of December 6, 2005.

XI. Why Is EPA Approving New Hampshire's State Plan?

EPA has evaluated the MWC State Plan submitted by New Hampshire for consistency with the Act, EPA guidelines and policy. EPA has determined that New Hampshire's State Plan meets all requirements and, therefore, EPA is approving New Hampshire's Plan to implement and enforce the EGs, as it applies to existing Large and Small MWCs.

EPA's approval of New Hampshire's State Plan is based on our findings that:

(1) NHDES provided adequate public notice of public hearings for the proposed rule-making that allows New Hampshire to carry out and enforce provisions that are at least as protective as the EGs for Large and Small MWCs, and

(2) NHDES demonstrated legal authority to adopt emission standards and compliance schedules applicable to the designated facilities; enforce applicable laws, regulations, standards and compliance schedules; seek injunctive relief; obtain information necessary to determine compliance; require record keeping; conduct inspections and tests; require the use of monitors; require emission reports of

owners and operators; and make emission data publicly available.

A detailed discussion of EPA's evaluation of the State Plan is included in the technical support document (TSD) located in the official file for this action and available from the EPA contact listed above. The State Plan meets all of the applicable approval criteria.

XII. Why Does EPA Need To Approve State Plans?

Under section 129 of the Act, EGs are not federally enforceable. Section 129(b)(2) of the Act requires states to submit State Plans to EPA for approval. Each state must show that its State Plan will carry out and enforce the emission guidelines. State Plans must be at least as protective as the EGs, and they become federally enforceable upon EPA's approval.

The procedures for adopting and submitting State Plans are in 40 CFR part 60, subpart B. EPA originally issued the subpart B provisions on November 17, 1975. EPA amended subpart B on December 19, 1995, to allow the subparts developed under section 129 to include specifications that supersede the general provisions in subpart B regarding the schedule for submittal of State Plans, the stringency of the emission limitations, and the compliance schedules. *See* 60 FR 65414.

XIII. Regulatory Assessment Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing sections 111(d)/129 State Plans, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a state plan for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a state plan, to use VCS in place of a submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*)

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 11, 2003. Interested parties should comment in response to the proposed rule rather than petition for judicial review, unless the objection arises after the comment period allowed for in the proposal. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 62

Environmental protection, Air pollution control, Intergovernmental relations, Sulfur oxides, Waste treatment and disposal, Reporting and recordkeeping requirements.

Dated: January 23, 2003.

Robert W. Varney,

Regional Administrator, EPA New England.

40 CFR part 62 of the Code of Federal Regulations is amended as follows:

PART 62—[AMENDED]

1. The authority citation for part 62 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart EE—New Hampshire

2. Part 62 is amended by adding a new § 62.7325(b)(4) and (c)(4) to subpart EE to read as follows:

Plan for the Control of Designated Pollutants From Existing Facilities (Section 111(d) Plan)

§ 62.7325 Identification of plan.

* * * * *

(b) * * *

(4) Control of air emissions from existing large and small municipal waste combustors, submitted on August 16, 2002.

(c) * * *

(4) Municipal waste combustors.

(i) Large MWCs with a capacity greater than 250 tons per day.

(ii) Small MWCs with a capacity of 250 tons per day or less.

3. Part 62 is amended by adding a new § 62.7460 and a new undesignated

center heading to subpart EE to read as follows:

Air Emissions From Existing Large and Small Municipal Waste Combustors

§ 62.7460 Identification of sources.

(a) The plan applies to the following existing large municipal waste combustor:

(1) The Wheelabrator Concord Co., L.P. in Penacook.

(2) [Reserved]

(b) The plan applies to the following existing small municipal waste combustor:

(1) The Wheelabrator Claremont Co., L.P. in Claremont.

(2) [Reserved]

[FR Doc. 03–2540 Filed 2–7–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[NH–50–7174a; FRL–7447–6]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants: New Hampshire; Plan for Controlling Emissions From Existing Commercial and Industrial Solid Waste Incinerators

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) approves the sections 111(d)/129 State Plan submitted by the New Hampshire Department of Environmental Services (NH DES) on August 12, 2002. This State Plan is for implementing and enforcing provisions at least as protective as the federal Emission Guidelines (EGs) applicable to existing Commercial and Solid Waste Incineration units (CISWIs).

DATES: This rule is effective on April 11, 2003 without further notice unless EPA receives significant adverse comment by March 12, 2003. If EPA receives such comments, we will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Comments must be submitted to Mr. Steven Rapp, Chief, Air Permits, Toxics & Indoor Programs Unit, Office of Ecosystem Protection, U.S. EPA, One Congress Street, Suite 1100 (CPA), boston, Massachusetts 02114–2023. You may examine copies of materials relevant to this action during normal business hours, by appointment at the following locations:

Environmental Protection Agency-New England, Region 1, Air Permits, Toxics & Indoor Programs, Office of Ecosystem Protection, Suite 1100, One Congress Street, Boston, Massachusetts 02114–2023.

New Hampshire Department of Environmental Services, Air Resources Division, 6 Hazen Drive, P.O. Box 95, Concord, New Hampshire 03302–0095.

The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the day of the visit.

FOR FURTHER INFORMATION CONTACT: John Courcier at (617) 918–1659.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. What action is EPA taking today?
II. Why Does EPA Want To Regulate Air Emissions From CISWIs?
III. When did EPA first publish these requirements?
IV. Who must comply with the requirements?
V. Are any sources exempt from the requirements?
VI. By what date must CISWIs in New Hampshire achieve compliance?
VII. What happens if a CISWI does not/cannot meet the requirements by the final compliance date?
VIII. What options are available to operators if they cannot achieve compliance within one year of the effective date of the State Plan?
IX. What Is a State Plan?
X. What did the state submit as part of its State Plan?
XI. Why Is EPA Approving New Hampshire's State Plan?
XII. Why does EPA need to approve State Plans?
XIII. Regulatory Assessment Requirements

I. What Action Is EPA Taking Today?

EPA is approving the above referenced State Plan which New Hampshire submitted on August 12, 2002 for the control of air emissions from existing CISWIs throughout the State.

EPA is publishing this approval action without prior proposal because the Agency views this as a noncontroversial action and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the State Plan should relevant adverse comments be filed. If EPA receives no significant, material, and adverse comments by March 12, 2003, this action will be effective April 11, 2003.

If EPA receives significant, material, and adverse comments by the above date, the Agency will withdraw this action before the effective date by publishing a subsequent document in the **Federal Register**. EPA will address all public comments received in a subsequent final rule based on the parallel proposed rule published in today's **Federal Register**. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

II. Why Does EPA Want To Regulate Air Emissions From CISWIs?

When burned, commercial and industrial solid wastes emit various air pollutants, including hydrochloric acid, dioxin/furan, toxic metals (lead, cadmium, and mercury) and particulate matter. Mercury is highly hazardous and is of particular concern because it persists in the environment and bioaccumulates through the food web. Serious developmental and adult effects in humans, primarily damage to the nervous system, have been associated with exposures to mercury. Harmful effects in wildlife have also been reported; these include nervous system damage and behavioral and reproductive deficits. Human and wildlife exposure to mercury occur mainly through eating of fish. When inhaled, mercury vapor attacks also the lung tissue and is a cumulative poison. Short-term exposure to mercury in certain forms can cause hallucinations and impair consciousness. Long-term exposure to mercury in certain forms can affect the central nervous system and cause kidney damage.

Exposure to particulate matter can aggravate existing respiratory and cardiovascular disease and increase risk of premature death. Hydrochloric acid is a clear colorless gas. Chronic exposure to hydrochloric acid has been reported to cause gastritis, chronic bronchitis, dermatitis, and photosensitization. Acute exposure to high levels of chlorine in humans may result in chest pain, vomiting, toxic pneumonitis, pulmonary edema, and death. At lower levels, chlorine is a potent irritant to the eyes, the upper respiratory tract, and lungs.

Exposure to dioxin and furan can cause skin disorders, cancer, and reproductive effects such as endometriosis. These pollutants can also affect the immune system.

III. When Did EPA First Publish These Requirements?

The EPA proposed the EGs in the **Federal Register** on November 30, 1999. On December 1, 2000, according to sections 111 and 129 of the Clean Air Act (Act), the EPA published the final form of the EGs applicable to existing CISWIs. The EGs are at 40 CFR part 60, subpart DDDD. *See* 65 FR 75362 and the **Background** section.

IV. Who Must Comply With the Requirements?

All CISWIs that commenced construction on or before November 30, 1999 must comply with these requirements.

V. Are Any Sources Exempt From the Requirements?

The following incinerator source categories are exempt from the federal requirements for CISWIs:

(1) Pathological waste incineration units.

(2) Agricultural waste incineration.

(3) Municipal Waste Combustors.

(4) Hospital/medical/infectious waste incineration units.

(5) Small power production facilities.

(6) Cogeneration facilities.

(7) Hazardous waste combustion.

(8) Materials recovery units.

(9) Air curtain incinerators.

(10) Cyclonic barrel burners.

(11) Rack, part, and drum reclamation.

(12) Cement kilns.

(13) Sewage sludge incinerators.

(14) Chemical recovery units.

(15) Laboratory analysis units.

Please refer to 40 CFR 60.2555 for specific definitions of these incinerator source categories, and any recordkeeping or other requirements that still may need to be met.

VI. By What Date Must CISWIs in New Hampshire Achieve Compliance?

All existing CISWI units in the State of New Hampshire must comply with these requirements by December 1, 2005.

VII. What Happens if a CISWI Does Not/Cannot Meet the Requirements by the Final Compliance Date?

Any existing CISWI that fails to meet the requirements by December 1, 2005 must shut down. The unit will not be allowed to start up until the owner/operator installs the controls necessary to meet the requirements.

VIII. What Options Are Available to Operators if They Cannot Achieve Compliance Within One Year of the Effective Date of the State Plan?

If a CISWI cannot achieve compliance within one year of the effective date of EPA approval of the State Plan, the operator must agree to meet certain increments of progress until it achieves compliance. The State Rule details the increments of progress for the affected CISWI.

IX. What Is a State Plan?

Section 111(d) of the Act requires that pollutants controlled under NSPS must also be controlled at older sources in the same source category. Once an NSPS is issued, EPA then publishes an EG applicable to the control of the same pollutant from existing (designated) facilities. States with designated facilities must then develop State Plans to adopt the EGs into their body of regulations. States must also include in their State Plans other elements, such as inventories, legal authority, and public participation documentation, to demonstrate their ability to enforce the State Plans.

X. What Did the State Submit as Part of Its State Plan?

The State of New Hampshire submitted its sections 111(d)/129 State Plan to EPA for approval on August 12, 2002. The State adopted the EG requirements into the New Hampshire Code of Administrative Rules Env-A 3400, ''Commercial and Industrial Solid Waste Incinerators'' on May 2, 2002. The State Plan contains:

1. A demonstration of the State's legal authority to implement the State Plan.

2. New Hampshire Rule CHAPTER Env-A 3400, ''Commercial and Industrial Solid Waste Incinerators'' as the enforceable mechanism.

3. An inventory of the sources on page 6 of the State Plan.

4. An emissions inventory on page 6 of the State Plan.

5. Emission limits, at least as protective as the limits found under subpart DDDD, that are contained in Env-A–3403.

6. Provisions for compliance schedules that are contained in Env-A 3406.

7. Testing, monitoring, and inspection requirements that are contained in Env-A 3408 and 3409.

8. Reporting and Recordkeeping requirements that are contained in Env-A 3410.

9. Operator training and qualification requirements that are contained in Env-A 3405.

10. Requirements for the development of a Waste Management Plan that are contained in Env-A 3407.

11. A record of the public notice and hearing requirements that are contained in Appendices E and F of the State Plan.

12. Provisions for state progress reports to EPA that are contained on page 9 of the State Plan.

13. Title V permit application due date requirements that are contained in Env–A 3411 and are due on December 1, 2003.

14. A final compliance date of December 1, 2005.

XI. Why Is EPA Approving New Hampshire's State Plan?

EPA has evaluated the CISWI State Plan submitted by New Hampshire for consistency with the Act, EPA guidelines and policy. EPA has determined that New Hampshire's State Plan meets all requirements and, therefore, EPA is approving New Hampshire's Plan to implement and enforce the EGs, as it applies to existing CISWIs.

EPA's approval of New Hampshire's State Plan is based on our findings that:

(1) NHDES provided adequate public notice of public hearings for the proposed rule-making that allows New Hampshire to carry out and enforce provisions that are at least as protective as the EGs for CISWIs, and

(2) NHDES demonstrated legal authority to adopt emission standards and compliance schedules applicable to the designated facilities; enforce applicable laws, regulations, standards and compliance schedules; seek injunctive relief; obtain information necessary to determine compliance; require record keeping; conduct inspections and tests; require the use of monitors; require emission reports of owners and operators; and make emission data publicly available.

A detailed discussion of EPA's evaluation of the State Plan is included in the technical support document (TSD) located in the official file for this action and available from the EPA contact listed above. The State Plan meets all of the applicable approval criteria.

XII. Why Does EPA Need To Approve State Plans?

Under section 129 of the Act, EGs are not federally enforceable. Section 129(b)(2) of the Act requires states to submit State Plans to EPA for approval. Each state must show that its State Plan will carry out and enforce the emission guidelines. State Plans must be at least as protective as the EGs, and they become federally enforceable upon EPA's approval.

The procedures for adopting and submitting State Plans are in 40 CFR part 60, subpart B. EPA originally issued the subpart B provisions on November 17, 1975. EPA amended subpart B on December 19, 1995, to allow the subparts developed under section 129 to include specifications that supersede the general provisions in subpart B regarding the schedule for submittal of State Plans, the stringency of the emission limitations, and the compliance schedules. *See* 60 FR 65414.

XIII. Regulatory Assessment Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing sections 111(d)/129 State Plans, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a state plan for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a state plan, to use VCS in place of a submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*)

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 11, 2003. Interested parties should comment in response to the proposed rule rather than petition for judicial review, unless the objection arises after the comment period allowed for in the proposal. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 62

Environmental protection, Air pollution control, Carbon monoxide, Metals, Nitrogen dioxide, Particulate matter, Sulfur oxides, Waste treatment and disposal, Reporting and recordkeeping requirements.

Dated: January 23, 2003.

Robert W. Varney,

Regional Administrator, EPA New England.

40 CFR part 62 of the Code of Federal Regulations is amended as follows:

PART 62—[AMENDED]

1. The authority citation for part 62 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q

Subpart EE—New Hampshire

2. Section 62.7325 is amended by adding paragraphs (b)(3) and (c)(3) to read as follows:

Plan for the Control of Designated Pollutants From Existing Facilities (Section 111(d) Plan)

§ 62.7325 Identification of plan.

* * * * *

(b) * * *

(3) Control of air emissions from existing commercial and industrial solid waste incineration units, submitted on August 12, 2002.

(c) * * *

(3) Commercial and industrial solid waste incineration units.

3. Subpart EE is amended by adding a new § 62.7455 and a new undesignated center heading to read as follows:

Air Emissions From Existing Commercial and Industrial Solid Waste Incineration Units

§ 62.7455 Identification of sources.

(a) The plan applies to the following existing commercial and solid waste incineration unit:

(1) D.D. Bean and Sons, Inc. in Jaffrey.

(2) [Reserved]

(b) [Reserved]

[FR Doc. 03–2941 Filed 2–7–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

National Emission Standards for Hazardous Air Pollutants: Generic Maximum Achievable Control Technology

CFR Correction

In Title 40 of the Code of Federal Regulations, Part 63 (§§ 63.600 to 63.1199), in § 63.1101, the definition of *Process wastewater* is added alphabetically to read as follows:

§ 63.1101 Definitions.

* * * * *

Process wastewater means wastewater which, during manufacturing or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, by-product, or waste product. Examples are product tank drawdown or feed tank drawdown, water formed during a chemical reaction or used as a reactant, water used to wash impurities from organic products or reactants, equipment washes between batches in a batch process, water used to cool or quench organic vapor streams through direct contact, and condensed steam from jet ejector systems pulling vacuum on vessels containing organics.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 405 and 419

[CMS–1206–CN2]

RIN 0938–AL19

Medicare Program; Changes to the Hospital Outpatient Prospective Payment System and Calendar Year 2003 Payment Rates; and Changes to Payment Suspension for Unfiled Cost Reports; Correction

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Correction of final rule with comment period.

SUMMARY: This document corrects errors that appeared in the final rule with comment period published in the **Federal Register** on November 1, 2002, entitled ‘‘Changes to the Hospital Outpatient Prospective Payment System and Calendar Year 2003 Payment Rates; and Changes to Payment Suspension for Unfiled Cost Reports.’’ This notice is a supplement to the November 1, 2002, final rule with comment period and to the November 15, 2002, correction notice, which added section ‘‘XVI. Waiver of Proposed Rulemaking.’’

EFFECTIVE DATE: January 1, 2003.

FOR FURTHER INFORMATION CONTACT: Anita Heygster, (410) 786–0378.

SUPPLEMENTARY INFORMATION:

I. Background

In FR Doc. 02–27548 of November 1, 2002 (67 FR 66719), there were several technical errors. The errors include incorrect or potentially misleading responses, incorrect description of comments, and revisions to information contained in Addenda A and B. In some cases, the errors were omissions, typographical errors, mathematical miscalculations or were caused by inadvertent failure to perform calculations or perform other functions as described in the final rule. We would ordinarily publish a notice of proposed rulemaking in the **Federal Register** and invite public comment on the proposed rule. This procedure can be waived, however, if an agency finds good cause that a notice-and-comment procedure is impracticable, unnecessary, or contrary to the public interest and incorporates a statement of the finding and its reasons in the rule issued. We find good cause to waive notice and comment procedures for this correction notice as set forth in section III, ‘‘Waiver of Proposed Rulemaking and Waiver of 30-Day Delay in Effective Date,’’ below.

II. Correction of Errors

On page 66719, in column 2, in the definition of CPT, we cited the 2002 Current Procedural Terminology (CPT), although the CPT codes used for the 2003 Hospital Outpatient Prospective Payment System (OPPS) are those found in the American Medical Association’s 2003 Current Procedural Terminology. Remove 2002 and insert 2003.

On page 66724, in column 3, under the second line following ‘‘Option 2:’’, we incorrectly cited as a Healthcare Common Procedure Coding System (HCPCS) code 703690. This is not a HCPCS code. Remove 703690 and insert 70390.

On page 66724, in column 3, under the forth line following ‘‘Option 3:’’, we incorrectly cited as a HCPCS code 7036736 and we omitted one HCPCS code that was presented to the APC Panel as discussed in the preamble. Remove 7036736 and insert 70373, 70120.

On page 66729, we inadvertently included two duplicate comments and responses on the issue of whether to move endometrial ablation out of a new technology Ambulatory Payment Classification (APC) for 2003. Remove the first comment and response under the heading ‘‘New Technology APC Issues’’ in column 2 and the second duplicative comment and response in column 3. The comment and response on this issue appear correctly on page 66737 (column 3, 4th comment and response). The comment and response on page 66737 are the correct comment and response on this issue; those being removed were mistakenly published.

On pages 66730, 66818, and 66914, we inadvertently included incorrect information that we intended to replace with correct information before publication of the final rule. Specifically, on page 66730, we inadvertently included an incorrect APC assignment for HCPCS codes 77523 and 77525. Remove Table 3 entries for HCPCS codes 77523, Proton Beam therapy intermediate, and 77525, Proton beam therapy complex. On page 66818, remove Addendum A entry for APC 650, Proton Beam Therapy. On page 66914, change the APC for HCPCS codes 77523 and 77525 from APC 650 to APC 712, and change payment and copayment amounts as described in corrections to Addendum B. Remove the first full response on page 66728, in column 3, and replace it with the following: ‘‘*Response:* We agree that codes for simple proton beam radiation therapy (CPT code 77522 and CPT code 77520) should be placed in a different APC than codes for intermediary (CPT code 77523) and complex (CPT code 77525) radiation therapy. However, it would be inappropriate to return codes for simple proton beam therapy to APCs for new technology services because we believe we have sufficient claims data to integrate them into the OPPS. Therefore, we have placed them in APC 664.

However, we agree that claims data are not sufficiently robust for us to move intermediate and complex proton beam therapy (CPT codes 77523 and 77525) out of APC 712. Therefore, we will retain these codes in APC 712 for the 2003 OPPS.’’

On page 66732, in column 1, in the first line carried over from the preceding page, we incorrectly stated that HCPCS code G0258 was effective on October 1, 2002, when it was effective April 1, 2002. Remove ‘‘October 1, 2002’’, and insert ‘‘April 1, 2002’’. HCPCS code G0258 was made effective April 1, 2002, and was removed effective January 1, 2003. The effective date of January 1, 2003, which is shown in Table 4—New G Codes for 2002 and 2003 for Which There are Final APC Assignments, is correct because January 1, 2003, is the effective date of the deletion of the code and the change of the status indicator to X. The entry in Addendum B on page 66979 correctly shows the payment amount and the minimum unadjusted copayment that will apply during the removed code’s grace period.

On page 66735, in column 2, the first response under item #4, we mistakenly said that the APC payment includes both the cost of the procedure and the cost for the left ventricular lead. Remove the sentence that says: ‘‘We believe the APC placement accounts for the cost of the procedure and for the lead.'' Insert the following sentence in its place: ''The APC payment accounts for the cost of the procedure and cost of the left ventricular lead is billed under the appropriate device category ''C'' code.''

On page 66741, in column 1, we failed to acknowledge and address a comment that objected to removing CPT code 92986 from the inpatient only list. Remove the response in this column and replace it with the following: ''*Response:* We agree with the commenters and with the APC Panel's recommendations that CPT code 47001 be payable under the OPPS beginning in 2003. Because this is an add-on code, payment will be packaged with the payment for the surgical procedure with which it is billed. We are making final our proposal to remove this code from the inpatient list but we will consider presenting this concern to the APC panel.

''The comment that urged that CPT code 92986, Percutaneous balloon valvuloplasty; aortic value, not be assigned to APC 0083 did not contain an explanation for the allegation that it cannot be performed safely in an outpatient setting. In the absence of such justification and in the absence of other comments disagreeing with our proposal to pay under the OPPS for the 41 CPT codes listed in Table 6 of the August 2002 proposed rule (67 FR 52115), we are making these proposed changes final.''

On page 66745, in Table 6, we included an incorrect APC assignment for an APC. Remove 693A and insert 648. APC 693 was split into two APCs to enable us to establish a weight for the services that require devices based on the claims on which the devices were billed. The APC with devices is APC 648, Breast Reconstruction with Prosthesis. It was properly shown in Addendum A of the November 1, 2002, final rule.

On page 66756, in column 2, at the end of the first complete paragraph, replace the comma after ''misuse'' with a period, and remove the following words ''or received marketing approval based on the use of surrogate outcomes.'' We never intended to perform reasonable and necessary determinations on new technology solely because FDA marketing approval was based on surrogate outcomes.

On page 66760, in Table 9, in the section titled ''Pass-through Devices Effective January 2003,'' we reversed the HCPCS codes for two items in the table (HCPCS codes C2614 and C2632). Remove HCPCS code C2614 and APC 2614 and replace them with HCPCS code C2632 and APC 2632. In the same location, remove HCPCS code C2632 and APC 2632 and replace them with HCPCS code C2614 and APC 2614.

On page 66768, in column 1, first comment at the top of the column, we incorrectly printed an exact replica of the immediately preceding comment. Remove the duplicate comment.

On page 66772, we failed to include a drug that meets our criteria as an orphan drug. HCPCS code J1785, Injection imiglucerase/unit meets the criteria for an orphan drug as specified in the November 1, 2001, final rule on page 66772. Remove the first full response in column 3 and replace it with the following: ''*Response:* After reviewing the comments and reexamining whether there were other orphan drugs than the three we proposed to pay separately, we have decided to remove four orphan drugs that do not have any other non-orphan indications from the OPPS system and will pay them on a reasonable cost basis. In addition to the three drugs we proposed to treat as orphan drugs in the August 9, 2002, proposed rule, we have determined that J1785, Injection imiglucerase/unit, meets the criteria of having no indication other than an orphan indication and therefore meets our definition of an orphan drug and will be paid on a reasonable cost basis. Other drugs that have orphan status according to the FDA will be partly protected by the dampening options described in section III.B. of this final rule.'' On page 66820, remove all Addendum A entries for APC 0916. On page 66983, under CPT/HCPCS code J1785, remove status indicator K and insert status indicator F. Remove the APC number, relative weight, payment amount, and minimum unadjusted copayment. See these changes in Tables 1 and 2.

On page 66778, in the first response in column 1, we erroneously said that APC 312 is the lowest paying brachytherapy APC. Remove the response to the first comment under ''Brachytherapy'' and replace it with the following: ''*Response:* The time frame of the claims used to set payment rates in the final rule differed from the time frame used in the proposed rule. According to the claims data used for the proposed rule, APC 312 was the lowest paying brachytherapy APC. However, according to the claims data used for the final rule, APC 0313 is the lowest paying brachytherapy APC. Therefore, CPT 77799 will remain in APC 313. This is consistent with our policy of assigning unspecified codes to the lowest paying similar APC because we do not know what procedures are being performed. Moreover, we do not apply the two times rule to unspecified codes like 77799 for the same reason. In 2003, CPT code 77799 is assigned to APC 0313.''

On pages 66779, 66780, and 66781, our discussions of the use of the Red Book in the setting of payment rates for pass-through drugs may have been misleading because we had misunderstandings regarding Red Book publications. The Red Book issues one comprehensive annual printed version, and it was our intent to convey that we relied on the most recent comprehensive annual printed version of the Red Book to set the pass-through payments for drugs for the 2003 OPPS. Our discussions of the Red Book in the November 1, 2002, **Federal Register** erroneously suggested that we rely on updates other than the comprehensive annual printed version. The corrections below clarify that we rely on the comprehensive annual printed version of the Redbook (which is printed once a year) to set the payment rates for pass-through drugs and that we intend to continue to do so in the future.

On page 66779, in column 3, in the last paragraph, delete the second sentence and insert the following: ''We update the APC rates for drugs that are eligible for pass through payments in 2003 using the comprehensive annual printed version of the Red Book.''

On page 66780, remove the following beginning on the first line of column 1 of page 66780: '',* * * when we would again * * * update the AWPs for any pass-through drugs based on the latest quarterly version of the Red Book.'' Insert a period.

On page 66781, remove the first paragraph of the response beginning at the bottom of column 1 of page 66781 and insert: ''*Response:* Upon considering the commenters suggestions that we use the October 2002 Red Book to set the pass-through rates for drugs and biologicals, we decided to continue using the comprehensive annual printed version of the Red Book since it is most consistent with our publication schedule. In the future, for all of our final rules that must be published by November, we intend to use the comprehensive annual printed version of the Red Book.''

On page 66781, column 2, last response, remove the response and insert: ''*Response:* As stated elsewhere in this final rule, we update the payment rates for pass-through drugs and biologicals only on an annual basis using the information published in the annual comprehensive printed version of the Red Book. We rely upon the Red Book to accurately reflect information supplied by manufacturers.''

On page 66795, in column 3, in the first comment, we mistakenly said that everyone agreed with our proposal, although we received one comment that opposed the proposed policy, not for reasons related to payment under the OPPS. On page 66795, remove ''Everyone'' and replace it with ''Many commenters.''

On page 66796, in column 2, in the fifth full paragraph, in the last sentence, we mistakenly included the word ''final'' in describing the diagnosis information needed to justify separate payment for observation services. Our systems review all diagnoses reported on the claim to make this decision. Remove the word ''final''.

On page 66815, for APC 0162, we incorrectly stated the relative weight, payment rate, and minimum unadjusted copayment. The values in the November 1, 2002, final rule for this APC were incorrect because we failed to recalculate the values after moving CPT/HCPCS codes into and out of this APC as we discussed in the November 1, 2002, final rule (67 FR 66736, 66746–66749).

Remove the relative weight, payment rate, and minimum unadjusted copayment and replace them with a relative weight of 20.7844, payment rate of $1,083.93, and minimum unadjusted copayment of $216.79. See Table 2—Corrections to Addendum B of the November 1, 2002, Final Rule for corrections to Addendum B for the codes assigned to APC 162.

On page 66815, for APC 0163, we incorrectly stated the relative weight, payment rate, and minimum unadjusted copayment. The values in the November 1, 2002, final rule for this APC were incorrect because we failed to recalculate the values after moving CPT/HCPCS codes into and out of this APC 163 as we discussed in the November 1, 2002, final rule (67 FR 66736, 66746–66749). Remove relative weight, payment rate, and minimum unadjusted copayment and insert a relative weight of 32.2861, payment rate of $1,683.75, and minimum unadjusted copayment of $336.75. *See* Table 2—Corrections to Addendum B of the November 1, 2002, Final Rule for corrections to Addendum B for the codes assigned to APC.

On page 66816, for APC 0235, we incorrectly stated the relative weight, payment rate, and minimum unadjusted copayment. The values in the November 1, 2002, final rule for this APC were incorrect because we failed to recalculate the values after moving CPT/HCPCS codes into and out of this APC as we discussed in the November 1, 2002, final rule (67 FR 66725, 66746–66749). Remove the relative weight, payment rate, and minimum unadjusted copayment and replace them with a relative weight of 4.9902, payment rate of $260.24, and minimum unadjusted copayment of $72.04. *See* Table 2—Corrections to Addendum B of the November 1, 2002, Final Rule for corrections to Addendum B for the codes assigned to APC 0235.

On page 66820, under APC 0905, we misstated the correct description of the APC group title. Remove from the group title ''Immune globulin 500 mg'' and replace it with ''Immune globulin, 1 g''. On page 66983, under CPT/HCPCS J1561, we assigned J1561 to an incorrect status indicator. Remove status indicator K and replace it with status indicator E. Remove the APC number, relative weight, payment rate, and minimum unadjusted copayment. Also on page 66983, under HCPCS/CPT J1563, we misstated the correct description of J1563 and did not include the correct payment information. Remove description ''IV immune globulin'' and status indicator E and replace them with ''Immune globulin, 1 g'' and status indicator K. Insert APC 0905, relative weight of 0.8333, payment rate of $43.46, and minimum unadjusted copayment of $8.69. The corrections are also shown on Tables 1 and 2 of this correction notice.

On page 66821, for APC 1045, group title Iobenguane sulfate 1–31 per 0.5 mCi, and on page 66958 for CPT/HCPCS code A9508, we stated incorrect values because the limitations on the reduction in median costs were inadvertently omitted. On page 66821, for APC 1045, remove the relative weight, payment rate, and minimum unadjusted copayment and insert a relative weight of 3.8662, payment rate of $201.63, and minimum unadjusted copayment of $40.33. Also, on page 66821, we misstated the correct description of the APC group title. Remove from the group title ''I–31per'' and replace it with ''I–131 per''. On page 66958, for CPT/HCPCS code A9508, remove the relative weight, payment rate, and minimum unadjusted copayment and insert a relative weight of 3.8662, payment rate of $201.63, and minimum unadjusted copayment of $40.33.

As a result of a technical recalculation to Eptifibatide Injection, CPT/HCPCS code J1327, the median cost for this drug exceeds the threshold used for determining whether a drug qualifies for a separate APC. To reflect this change, on page 66821, insert APC 1607, group title of Eptifibatide Injection, 5 mg, status indictor of K, relative weight of 0.1453, payment rate of $7.58, minimum unadjusted copayment of $1.52.

On page 66821, under APC 2616, Brachytx seed, Yttrium-90, and on page 66961, under HCPCS code C2616, we inserted incorrect values. We made an error in calculation of the relative weight, payment rate, and copayment. On page 66821, remove the relative weight, payment amount, and minimum unadjusted copayment and insert a relative weight of 124.3576, payment amount of $6,485.37, and minimum unadjusted copayment amount of $1,297.07. On page 66961, under CPT/HCPCS code C2616, description Brachytx seed, Yttrium-90, remove the relative weight, payment amount, and minimum unadjusted copayment and insert a relative weight of 124.3576, payment amount of $6,485.37, and minimum unadjusted copayment amount of $1,297.07.

On page 66822, for APC 9015, Mycophenolate mofetil oral 250 mg, and on page 66986, under HCPCS code J7517, we failed to include the correct status indicator, relative weight, payment rate, and copayment. Remove the status indicator, relative weight, payment rate, and minimum unadjusted copayment for APC 9015 on page 66822 and insert a status indicator of G, payment rate of $2.53, and minimum unadjusted copayment of $0.38. On page 66986, under CPT/HCPCS code J7517, description Mycophenolate mofetil oral 250 mg, remove the status indicator, relative weight, payment rate, and minimum unadjusted copayment and insert a status indicator of G, payment rate of $2.53, and minimum unadjusted copayment of $0.38. These corrections are also shown in Tables 1 and 2 of this correction notice.

On page 66822, under APC 9112, group title Perflutren lipid micro, per 2 ml, and on page 66961, under HCPCS code C9112, we failed to include the correct payment and copayment rates. On page 66822, remove the payment rate and minimum unadjusted copayment and insert a payment rate of $148.20 and minimum unadjusted copayment of $22.15. On page 66961, under CPT/HCPCS code C9112, description Perflutren lipid micro, per 2 ml, remove the payment rate and minimum unadjusted copayment and insert a payment rate of $148.20 and minimum unadjusted copayment of $22.15. These corrections are also shown in Tables 1 and 2 of this correction notice.

On page 66822 for APC 9114 we incorrectly stated the description of the APC, and we stated incorrect payment and copayment information. On page 66822, remove the description of the APC and the payment and copayment information and insert the following:

APC description of Nesiritide, per 0.5 mg vial, payment amount of $144.40, and unadjusted national copayment amount of $21.58. On page 66984 for HCPCS code J2324, we incorrectly stated the description of the HCPCS code, and we stated incorrect payment and copayment information. On page 66984, remove the description of HCPCS code J2324 and the payment and copayment information and insert the following: Description of Nesiritide, per 0.5 mg vial, payment amount of $144.40, and unadjusted national copayment amount of $21.58.

On page 66822 for APC 9115, we incorrectly stated the description of the APC, and we stated incorrect payment and copayment information. On page 66822, remove the description of the APC and the payment and copayment information and insert the following: APC description of Inj, zoledronic acid, per 1 mg, payment amount of $203.39, and unadjusted national copayment amount of $30.40. On page 66985 for HCPCS code J3487, we incorrectly stated the description of the HCPCS code, and we stated incorrect payment and copayment information. Remove the description of HCPCS code J3487 and the payment and copayment information and insert the following: Description of Inj, zoledronic acid, per 1 mg, payment amount of $203.39, and unadjusted national copayment amount of $30.40.

On page 66822, under APC 9120, group title Inj. Fulvestrant, per 50 mg, and on page 66962, under CPT/HCPCS code C9120, we failed to include the correct payment and copayment. Remove the payment rate and minimum unadjusted copayment and insert a payment rate of $175.16 and minimum unadjusted copayment of $26.18. On page 66962, under CPT/HCPCS code C9120, remove the payment rate and minimum unadjusted copayment and insert a payment rate of $175.16 and minimum unadjusted copayment of $26.18. These corrections are also shown in Tables 1 and 2.

On page 66847, we incorrectly assigned status code N to CPT/HCPCS code 27096, inject sacroiliac joint. Two new codes, G0259, inject for sacroiliac joint, and G0260, inject for sacroiliac joint anesthesia, replace CPT code 27096 for reporting these injections in 2003. On page 66847, for CPT/HCPCS 27096, remove the status indicator of N and insert a status indicator of E.

On page 66916, for CPT/HCPCS code 78459, description Heart muscle imaging (PET), we assigned the wrong status indicator and did not include needed payment information. On page 66916, remove the status indicator of E and insert a status indicator of S, APC of 285, relative weight of 18.1294, payment rate of $945.47, national unadjusted copayment of $409.56, and minimum unadjusted copayment of $189.09.

On page 66958, for HCPCS codes A9522 (Indium111ibritumomabtiuxetan) and A9523 (Y–90ibritumomabtiuxetan), we wrongly assigned status indicator E, although the service is paid under the OPPS as a packaged service for which payment is made as a part of a separately billable service. On page 66958, remove the status indicator E and insert status indicator N for both codes. These corrections are also shown in Tables 1 and 2 of this correction notice.

On page 66972, for CPT/HCPCS code E0481, Intrpulmnry percuss vent sys, we wrongly assigned status indicator A, although the service is not covered under Medicare. On page 66972, remove status indicator A and insert status indicator E.

For the following codes on the pages identified, beginning on page 66974 and continuing as noted below on pages 67004, 67005, and 67006, we wrongly assigned status indicator E (not paid under OPPS or not covered) or A (paid under a payment system other than OPPS). These codes are for services that are covered and paid under OPPS but for which payment is packaged into payment for other OPPS services. Therefore, they require the status indicator of ''N.'' We made this correction on page 66974, for codes E0752, E0756, E0757, E0782, E0783, E0785, E0786; on page 67004, for code L8606; on page 67005, for code L8614; and on page 67006, for codes Q1001, Q1002, Q1003, Q1004, and Q1005. These changes are also shown in Table 2—Corrections to Addendum B of the November 1, 2002, Final Rule for corrections to Addendum B for the codes identified above.

On page 66979, under CPT/HCPCS codes G0237, G0238, and G0239, we inadvertently assigned these codes to the incorrect APC and assigned an incorrect status indicator. Remove APC 0970 (group title New Technology Level I ($0–$50)) and status indicator T and insert APC 0706 (group title New Technology Level I) and status indicator of S. These corrections are also shown in Table 2 of this correction notice.

On pages 66979 and 66980, for CPT/HCPCS codes G0281, G0282, and G0283, we assigned the wrong status indicator. Remove the status indicator A. Insert the status indicator E. These codes are not effective for January 1, 2003; they are effective April 1, 2003.

On page 66979, for CPT/HCPCS code G0252, PET imaging initial dx, we incorrectly assigned a status indicator, APC, payment rate, and minimum unadjusted copayment. G0252 represents a noncovered condition under Medicare coverage policy and no payment should be made for this service. Remove status indicator S, APC, payment rate, and minimum unadjusted copayment and insert status indicator E.

On page 66983, for CPT/HCPCS code J1327, remove status indicator of N and insert status indicator of K, APC of 1607, relative weight of 0.1453, payment rate of $7.58, minimum unadjusted copayment of $1.52. This change results from the change relating to Eptifibatide Injection discussed above.

On page 66984, for CPT/HCPCS code J2260, Inj, milrinone lactate /5ml, we incorrectly stated the description. Remove ''ml'' and insert ''mg''.

On page 67006, for CPT/HCPCS code Q0184, Metabolically active tissue, we failed to include a condition code to indicate that the grace period applies, although the code is removed for 2003. Insert condition code DG.

III. Waiver of Proposed Rulemaking and Waiver of 30-Day Delay in Effective Date

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** to provide a period for public comment before the provisions of a notice take effect. We can waive this procedure, however, if we find good cause that notice and comment procedure is impracticable, unnecessary, or contrary to the public interest and incorporate a statement of the finding and the reasons for it into the notice issued.

In addition, we ordinarily provide a 30-day delay in the effective date of the provisions of a notice. Section 553(d) of the Administrative Procedure Act (5 U.S.C. section 553(d)) ordinarily requires a 30-day delay in the effective date of final rules after the date of their publication in the **Federal Register**. This 30-day delay in effective date can be waived, however, if an agency finds for good cause that the delay is impracticable, unnecessary, or contrary to the public interest, and the agency incorporates a statement of the finding and its reasons in the rule issued.

In this case, we believe that it is in the public interest to make the corrections we identify above effective on January 1, 2003, without the 30-day delay in effective date because to fail to do so would result, in most cases, in underpayment of hospitals beginning January 1, 2003, with the implementation of the updated OPPS rates. If we did not make these changes, hospitals would be paid improperly, access to care may be impeded for beneficiaries, and the preamble would not correctly explain the reasons for changes to policy that were made in response to comments. In most cases, these errors were the result of errors in mathematical calculations, inadvertent publication of language we did not intend to publish, failure to apply policies that we stated in the final rule had been applied, typographic errors, or misstatements of fact. These corrections do not cause reductions in payment for any other services.

We also find it unnecessary to undertake notice and comment rulemaking procedures because the corrections in this notice are technical in nature, reflecting the proper application of the policies in the November 1, 2002, final rule, and do not change any of the policies therein. Therefore, we find good cause to waive notice and comment procedures and to waive the 30-day delay in effective date.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: January 29, 2003.

Ann Agnew,

Executive Secretary to the Department.

Note: The following tables are published for the convenience of the reader. These tables reflect corrections made in section II of the SUPPLEMENTARY INFORMATION.

BILLING CODE 4120–01–P

Table 1 - Corrections to Addendum A - List of Ambulatory Payment Classifications (APCs) With Status Indicators, Relative Weights, Payment Rates, and Copayment Amounts

Addendum A as Published November 1, 2002							Addendum A as corrected by this Federal Register Notice						
APC	GROUP TITLE	Status indicator	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment	APC	GROUP TITLE	Status indicator	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
0162	Level III Cystourethroscopy and other Genitourinary Procedures	T	20.5906	$1,073.82		$214.76	0162	Level III Cystourethroscopy and other Genitourinary Procedures		20.7844	$1,083.93		$216.79
0163	Level IV Cystourethroscopy and other Genitourinary Procedures	T	28.3714	$1,479.60		$295.92	0163	Level IV Cystourethroscopy and other Genitourinary Procedures		32.2861	$1,683.75		$336.75
0235	Level I Posterior Segment Eye Procedures	T	5.0871	$265.30	$73.44	$53.06	0235	Level I Posterior Segment Eye Procedures		4.9902	$260.24		$72.04
0285	Myocardial Positron Emisson Tomography (PET)	E					0285	Heart muscle imaging (PET)	S	18.1294	$945.47	$409.56	$189.09
0650	Intermediate/Complex Proton Beam Radiation Therapy	S	12.0152	$626.60		$125.32	-------	------------------------------	--------	-----	--------	-------	----------
0905	Immune globulin 500 mg	K	0.8333	$43.46		$8.69	0905	Immune globulin, 1 g					
0916	Injection imiglucerase /unit	K	0.0484	$2.52		$0.50	--------	------------------------------	--------	------	--------	--------	----------
1045	Iobenguane sulfate I-31per 0.5 mCi	K	1.5697	$81.86		$16.37	1045	Iobenguane sulfate I-131 per 0.5 mCi		3.8662	$201.63		$40.33
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2616	Brachytx seed, Yttrium-90	K	8.8370	$460.86		$92.17	2616	Brachytx seed, Yttrium-90		124.3576	$6,485.37		$1,297.07
9015	Mycophenolate mofetil oral 250 mg	K	0.0291	$1.52		$0.30	9015	Mycophenolate mofetil oral 250 mg	G		$2.53		$0.38
9112	Perflutren lipid micro, per 2ml	G		$4.94		$0.74	9112	Perflutren lipid micro, per 2ml			$148.20		$22.15
9114	Nesiritide, per 1.5 mg vial	G		$433.20		$64.75	9114	Nesiritide, per 0.5 mg vial	G		$144.40		$21.58
9115	Inj, zoledronic acid, per 2 mg	G		$406.78		$60.80	9115	Inj, zoledronic acid, per 1 mg	G		$203.39		$30.40
9120	Inj, Fulvestrant, per 50 mg	G		$87.58		$13.09	9120	Inj, Fulvestrant, per 50 mg			$175.16		$26.18

Addendum B as published November 1, 2002								
CPT/ HCPCS	Status Indicator	Code condition	Description	APC	Relative weight	Payment rate	National Unadjusted Copayment	Minimun Unadjusted copayment
27096	N		Inject sacroliac joint					
50080	T		Removal of kidney stone	0163	28.3714	$1,479.60		$295.92
50081	T		Removal of kidney stone	0163	28.3714	$1,479.60		$295.92
50557	T		Kidney endoscopy & treatment	0162	20.5906	$1,073.82		$214.76
51020	T		Incise & treat bladder	0162	20.5906	$1,073.82		$214.76
51030	T		Incise & treat bladder	0162	20.5906	$1,073.82		$214.76
51040	T		Incise & drain bladder	0162	20.5906	$1,073.82		$214.76
51050	T		Removal of bladder stone	0162	20.5906	$1,073.82		$214.76
51065	T		Remove ureter calculus	0162	20.5906	$1,073.82		$214.76
51520	T		Removal of bladder lesion	0162	20.5906	$1,073.82		$214.76
51880	T		Repair of bladder opening	0162	20.5906	$1,073.82		$214.76
52214	T		Cystoscopy and treatment	0162	20.5906	$1,073.82		$214.76
52224	T		Cystoscopy and treatment	0162	20.5906	$1,073.82		$214.76
52234	T		Cystoscopy and treatment	0162	20.5906	$1,073.82		$214.76
52235	T		Cystoscopy and treatment	0162	20.5906	$1,073.82		$214.76
52240	T		Cystoscopy and treatment	0162	20.5906	$1,073.82		$214.76
52250	T		Cystoscopy and radiotracer	0162	20.5906	$1,073.82		$214.76
52277	T		Cystoscopy and treatment	0162	20.5906	$1,073.82		$214.76
52282	T		Cystoscopy, implant stent	0163	28.3714	$1,479.60		$295.92
52317	T		Remove bladder stone	0162	20.5906	$1,073.82		$214.76
52318	T		Remove bladder stone	0162	20.5906	$1,073.82		$214.76
52320	T		Cystoscopy and treatment	0162	20.5906	$1,073.82		$214.76
52325	T		Cystoscopy, stone removal	0162	20.5906	$1,073.82		$214.76
52327	T		Cystoscopy, inject material	0162	20.5906	$1,073.82		$214.76
52330	T		Cystoscopy and treatment	0162	20.5906	$1,073.82		$214.76
52332	T		Cystoscopy and treatment	0162	20.5906	$1,073.82		$214.76
52334	T		Create passage to kidney	0162	20.5906	$1,073.82		$214.76
52341	T		Cysto w/ureter stricture tx	0162	20.5906	$1,073.82		$214.76
52342	T		Cysto w/up stricture tx	0162	20.5906	$1,073.82		$214.76
52343	T		Cysto w/renal stricture tx	0162	20.5906	$1,073.82		$214.76
52344	T		Cysto/uretero, stone remove	0162	20.5906	$1,073.82		$214.76
52345	T		Cysto/uretero w/up stricture	0162	20.5906	$1,073.82		$214.76
52346	T		Cystouretero w/renal strict	0162	20.5906	$1,073.82		$214.76
52352	T		Cystouretero w/stone remove	0162	20.5906	$1,073.82		$214.76
52353	T		Cystouretero w/lithotripsy	0163	28.3714	$1,479.60		$295.92
52354	T		Cystouretero w/biopsy	0162	20.5906	$1,073.82		$214.76
52355	T		Cystouretero w/excise tumor	0162	20.5906	$1,073.82		$214.76
52400	T		Cystouretero w/congen repr	0162	20.5906	$1,073.82		$214.76
52450	T		Incision of prostate	0162	20.5906	$1,073.82		$214.76
52500	T		Revision of bladder neck	0162	20.5906	$1,073.82		$214.76
52601	T		Prostatectomy (TURP)	0163	28.3714	$1,479.60		$295.92
52606	T		Control postop bleeding	0162	20.5906	$1,073.82		$214.76
52612	T		Prostatectomy, first stage	0163	28.3714	$1,479.60		$295.92
52614	T		Prostatectomy, second stage	0163	28.3714	$1,479.60		$295.92
52620	T		Remove residual prostate	0163	28.3714	$1,479.60		$295.92
52630	T		Remove prostate regrowth	0163	28.3714	$1,479.60		$295.92
52640	T		Relieve bladder contracture	0162	20.5906	$1,073.82		$214.76
52647	T		Laser surgery of prostate	0163	28.3714	$1,479.60		$295.92
52648	T		Laser surgery of prostate	0163	28.3714	$1,479.60		$295.92
52700	T		Drainage of prostate abscess	0162	20.5906	$1,073.82		$214.76
55720	T		Drainage of prostate abscess	0162	20.5906	$1,073.82		$214.76
55725	T		Drainage of prostate abscess	0162	20.5906	$1,073.82		$214.76
55859	T		Percut/needle insert, pros	0163	28.3714	$1,479.60		$295.92
67028	T		Injection eye drug	0235	5.0871	$265.30	$73.44	$53.06
67101	T		Repair detached retina	0235	5.0871	$265.30	$73.44	$53.06
67110	T		Repair detached retina	0235	5.0871	$265.30	$73.44	$53.06
67141	T		Treatment of retina	0235	5.0871	$265.30	$73.44	$53.06
67208	T		Treatment of retinal lesion	0235	5.0871	$265.30	$73.44	$53.06
67220	T		Treatment of choroid lesion	0235	5.0871	$265.30	$73.44	$53.06
67221	T		Ocular photodynamic ther	0235	5.0871	$265.30	$73.44	$53.06
67225	T		Eye photodynamic ther add-on	0235	5.0871	$265.30	$73.44	$53.06
67227	T		Treatment of retinal lesion	0235	5.0871	$265.30	$73.44	$53.06
67299	T		Eye surgery procedure	0235	5.0871	$265.30	$73.44	$53.06
77523	T		New Technology -- Level VII ($75	0650		$626.60		$125.32
77525	T		New Technology -- Level VII ($75	0650		$626.60		$125.32

Addendum B as corrected in this Federal Register Notice								
CPT/ HCPCS	Status Indicator	Code condition	Description	APC	Relative weight	Payment rate	National Unadjusted Copayment	Minimun Unadjusted copayment
27096	E		Inject sacroliac joint					
50080	T		Removal of kidney stone	0163	**32.2861**	**$1,683.75**		**$336.75**
50081	T		Removal of kidney stone	0163	**32.2861**	**$1,683.75**		**$336.75**
50557	T		Kidney endoscopy & treatment	0162	**20.7844**	**$1,083.93**		**$216.79**
51020	T		Incise & treat bladder	0162	**20.7844**	**$1,083.93**		**$216.79**
51030	T		Incise & treat bladder	0162	**20.7844**	**$1,083.93**		**$216.79**
51040	T		Incise & drain bladder	0162	**20.7844**	**$1,083.93**		**$216.79**
51050	T		Removal of bladder stone	0162	**20.7844**	**$1,083.93**		**$216.79**
51065	T		Remove ureter calculus	0162	**20.7844**	**$1,083.93**		**$216.79**
51520	T		Removal of bladder lesion	0162	**20.7844**	**$1,083.93**		**$216.79**
51880	T		Repair of bladder opening	0162	**20.7844**	**$1,083.93**		**$216.79**
52214	T		Cystoscopy and treatment	0162	**20.7844**	**$1,083.93**		**$216.79**
52224	T		Cystoscopy and treatment	0162	**20.7844**	**$1,083.93**		**$216.79**
52234	T		Cystoscopy and treatment	0162	**20.7844**	**$1,083.93**		**$216.79**
52235	T		Cystoscopy and treatment	0162	**20.7844**	**$1,083.93**		**$216.79**
52240	T		Cystoscopy and treatment	0162	**20.7844**	**$1,083.93**		**$216.79**
52250	T		Cystoscopy and radiotracer	0162	**20.7844**	**$1,083.93**		**$216.79**
52277	T		Cystoscopy and treatment	0162	**20.7844**	**$1,083.93**		**$216.79**
52282	T		Cystoscopy, implant stent	0163	**32.2861**	**$1,683.75**		**$336.75**
52317	T		Remove bladder stone	0162	**20.7844**	**$1,083.93**		**$216.79**
52318	T		Remove bladder stone	0162	**20.7844**	**$1,083.93**		**$216.79**
52320	T		Cystoscopy and treatment	0162	**20.7844**	**$1,083.93**		**$216.79**
52325	T		Cystoscopy, stone removal	0162	**20.7844**	**$1,083.93**		**$216.79**
52327	T		Cystoscopy, inject material	0162	**20.7844**	**$1,083.93**		**$216.79**
52330	T		Cystoscopy and treatment	0162	**20.7844**	**$1,083.93**		**$216.79**
52332	T		Cystoscopy and treatment	0162	**20.7844**	**$1,083.93**		**$216.79**
52334	T		Create passage to kidney	0162	**20.7844**	**$1,083.93**		**$216.79**
52341	T		Cysto w/ureter stricture tx	0162	**20.7844**	**$1,083.93**		**$216.79**
52342	T		Cysto w/up stricture tx	0162	**20.7844**	**$1,083.93**		**$216.79**
52343	T		Cysto w/renal stricture tx	0162	**20.7844**	**$1,083.93**		**$216.79**
52344	T		Cysto/uretero, stone remove	0162	**20.7844**	**$1,083.93**		**$216.79**
52345	T		Cysto/uretero w/up stricture	0162	**20.7844**	**$1,083.93**		**$216.79**
52346	T		Cystouretero w/renal strict	0162	**20.7844**	**$1,083.93**		**$216.79**
52352	T		Cystouretero w/stone remove	0162	**20.7844**	**$1,083.93**		**$216.79**
52353	T		Cystouretero w/lithotripsy	0163	**32.2861**	**$1,683.75**		**$336.75**
52354	T		Cystouretero w/biopsy	0162	**20.7844**	**$1,083.93**		**$216.79**
52355	T		Cystouretero w/excise tumor	0162	**20.7844**	**$1,083.93**		**$216.79**
52400	T		Cystouretero w/congen repr	0162	**20.7844**	**$1,083.93**		**$216.79**
52450	T		Incision of prostate	0162	**20.7844**	**$1,083.93**		**$216.79**
52500	T		Revision of bladder neck	0162	**20.7844**	**$1,083.93**		**$216.79**
52601	T		Prostatectomy (TURP)	0163	**32.2861**	**$1,683.75**		**$336.75**
52606	T		Control postop bleeding	0162	**20.7844**	**$1,083.93**		**$216.79**
52612	T		Prostatectomy, first stage	0163	**32.2861**	**$1,683.75**		**$336.75**
52614	T		Prostatectomy, second stage	0163	**32.2861**	**$1,683.75**		**$336.75**
52620	T		Remove residual prostate	0163	**32.2861**	**$1,683.75**		**$336.75**
52630	T		Remove prostate regrowth	0163	**32.2861**	**$1,683.75**		**$336.75**
52640	T		Relieve bladder contracture	0162	**20.7844**	**$1,083.93**		**$216.79**
52647	T		Laser surgery of prostate	0163	**32.2861**	**$1,683.75**		**$336.75**
52648	T		Laser surgery of prostate	0163	**32.2861**	**$1,683.75**		**$336.75**
52700	T		Drainage of prostate abscess	0162	**20.7844**	**$1,083.93**		**$216.79**
55720	T		Drainage of prostate abscess	0162	**20.7844**	**$1,083.93**		**$216.79**
55725	T		Drainage of prostate abscess	0162	**20.7844**	**$1,083.93**		**$216.79**
55859	T		Percut/needle insert, pros	0163	**32.2861**	**$1,683.75**		**$336.75**
67028	T		Injection eye drug	0235	**4.9902**	**$260.24**		**$72.04**
67101	T		Repair detached retina	0235	**4.9902**	**$260.24**		**$72.04**
67110	T		Repair detached retina	0235	**4.9902**	**$260.24**		**$72.04**
67141	T		Treatment of retina	0235	**4.9902**	**$260.24**		**$72.04**
67208	T		Treatment of retinal lesion	0235	**4.9902**	**$260.24**		**$72.04**
67220	T		Treatment of choroid lesion	0235	**4.9902**	**$260.24**		**$72.04**
67221	T		Ocular photodynamic ther	0235	**4.9902**	**$260.24**		**$72.04**
67225	T		Eye photodynamic ther add-on	0235	**4.9902**	**$260.24**		**$72.04**
67227	T		Treatment of retinal lesion	0235	**4.9902**	**$260.24**		**$72.04**
67299	T		Eye surgery procedure	0235	**4.9902**	**$260.24**		**$72.04**
77523	S		**New Technology -- Level VII ($7**	**0712**		**$875.00**		**$175.00**
77525	S		**New Technology -- Level VII ($7**	**0712**		**$875.00**		**$175.00**

Table 2 - Corrections to Addendum B - Payment Status by HCPCS Code and Related Information

Addendum B as published November 1, 2002

CPT/ HCPCS	Status Indicator	Code condition	Description	APC	Relative weight	Payment rate	National Unadjusted Copayment	Minimun Unadjusted copayment
78459	E		Heart muscle imaging (PET)					
A9508	K		Iobenguane sulfate I-131	1045	1.5697	$81.86		$16.37
A9522	E	NI	Indium111ibritumomabtiuxetan					
A9523	E	NI	Yttrium90ibritumomabtiuxetan					
C2616	K		Brachytx seed, Yttrium-90	2616	8.8370	$460.86		$92.17
C9112	G		Perflutren lipid micro, 2ml	9112		$4.94		$0.74
C9120	G	NI	Injection, fulvestrant	9120		$87.58		$13.09
E0481	A		Intrpulmnry percuss vent sys					
E0752	E		Neurostimulator electrode					
E0756	E		Implantable pulse generator					
E0757	E		Implantable RF receiver					
E0782	E		Non-programble infusion pump					
E0783	E		Programmable infusion pump					
E0785	E		Replacement impl pump cathet					
E0786	E		Implantable pump replacement					
G0185	T		Transpuppillary thermotx	0235	5.0871	$265.30	$73.44	$53.06
G0186	T		Dstry eye lesn,fdr vssl tech	0235	5.0871	$265.30	$73.44	$53.06
G0187	T		Dstry mclr drusen,photocoag	0235	5.0871	$265.30	$73.44	$53.06
G0237	T		Therapeutic procd strg endur	0970		$25.00		$5.00
G0238	T		Oth resp proc, indiv	0970		$25.00		$5.00
G0239	T		Oth resp proc, group	0970		$25.00		$5.00
G0252	S	NI	PET imaging initial dx	714		$1,375.00		$275.00
G0281	A	NI	Elec stim unattend for press					
G0282	A	NI	Elect stim wound care not pd					
G0283	A	NI	Elec stim other than wound					
J1327	N		Eptifibatide injection, 5mg					
J1561	K	DG	Immune globulin 500 mg	0905	0.8333	$43.46		$8.69
J1563	E		IV immune globulin					
J1785	K		Injection imiglucerase /unit	0916	0.0484	$2.52		$0.50
J2260	N		Inj milrinone lactate / 5 ml					
J2324	G	NI	Nesiritide	9114		$433.20		$64.75
J3487	G	NI	Zoledronic acid	9115		$406.78		$60.80
J7517	K		Mycophenolate mofetil oral	9015	0.0291	$1.52		$0.30
L8606	A		Synthetic implnt urinary 1ml					
L8614	E		Cochlear device/system					
Q0184	N		Metabolically active tissue					
Q1001	E		Ntiol category 1					
Q1002	E		Ntiol category 2					
Q1003	E		Ntiol category 3					
Q1004	E		Ntiol category 4					
Q1005	E		Ntiol category 5					

Addendum B as corrected in this Federal Register Notice

CPT/ HCPCS	Status Indicator	Code condition	Description	APC	Relative weight	Payment rate	National Unadjusted Copayment	Minimun Unadjusted copayment
78459	**S**		Heart muscle imaging (PET)	**0285**	**18.1294**	**$945.47**	**$409.56**	**$189.09**
A9508	K		Iobenguane sulfate I-131	1045	**3.8662**	**$201.63**		**$40.33**
A9522	**N**	NI	Indium111ibritumomabtiuxetan					
A9523	**N**	NI	Yttrium90ibritumomabtiuxetan					
C2616	K		Brachytx seed, Yttrium-90	2616	**124.3576**	**$6,485.37**		**$1,297.07**
C9112	G		Perflutren lipid micro, 2 ml	9112		**$148.20**		**$22.15**
C9120	G	NI	Injection, fulvestrant	9120		**$175.16**		**$26.18**
E0481	**E**		Intrpulmnry percuss vent sys					
E0752	**N**		Neurostimulator electrode					
E0756	**N**		Implantable pulse generator					
E0757	**N**		Implantable RF receiver					
E0782	**N**		Non-programble infusion pump					
E0783	**N**		Programmable infusion pump					
E0785	**N**		Replacement impl pump cathet					
E0786	**N**		Implantable pump replacement					
G0185	T		Transpuppillary thermotx	0235	**4.9902**	**$260.24**		**$72.04**
G0186	T		Dstry eye lesn,fdr vssl tech	0235	**4.9902**	**$260.24**		**$72.04**
G0187	T		Dstry mclr drusen,photocoag	0235	**4.9902**	**$260.24**		**$72.04**
G0237	**S**		Therapeutic procd strg endur	**0706**				
G0238	**S**		Oth resp proc, indiv	**0706**				
G0239	**S**		Oth resp proc, group	**0706**				
G0252	**E**	NI	PET imaging initial dx					
G0281	**E**	NI	Elec stim unattend for press					
G0282	**E**	NI	Elect stim wound care not pd					
G0283	**E**	NI	Elec stim other than wound					
J1327	**K**		**Eptifibatide injection, 5 mg**	**1607**	**0.1453**	**$7.58**		**$1.52**
J1561	E	DG	Immune globulin 500mg		------	----------	--------	--------
J1563	**K**		**Immune globulin, 1 g**	**0905**	**0.8333**	**$43.46**		**$8.69**
J1785	**F**		Injection, imiglucerase/unit	------	------	----------	--------	--------
J2260	N		**Inj milrinone lactate / 5 mg**					
J2324	G		**Nesiritide, per 0.5 mg vial**	9114		**$144.40**		**$21.58**
J3487	G		**Inj, zoledronic acid, per 1 mg**	9115		**$203.39**		**$30.40**
J7517	**G**		Mycophenolate mofetil oral	9015		**$2.53**		**$0.38**
L8606	**N**		Synthetic implnt urinary 1ml					
L8614	**N**		Cochlear device/system					
Q0184	N	**DG**	Metabolically active tissue					
Q1001	**N**		Ntiol category 1					
Q1002	**N**		Ntiol category 2					
Q1003	**N**		Ntiol category 3					
Q1004	**N**		Ntiol category 4					
Q1005	**N**		Ntiol category 5					

Table 2 - Corrections to Addendum B - Payment Status by HCPCS Code and Related Information

[FR Doc. 03–2789 Filed 2–7–03; 8:45 am]
BILLING CODE 4120–01–C

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

[Docket No. FEMA–B–7434]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Interim rule.

SUMMARY: This interim rule lists communities where modification of the Base (1-percent-annual-chance) Flood Elevations is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified Base Flood Elevations for new buildings and their contents.

DATES: These modified Base Flood Elevations are currently in effect on the dates listed in the table below and revise the Flood Insurance Rate Maps in effect prior to this determination for each listed community.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Administrator, Federal Insurance and Mitigation Administration, reconsider the changes. The modified elevations may be changed during the 90-day period.

ADDRESSES: The modified Base Flood Elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Michael M. Grimm, Acting Chief, Hazards Study Branch, Federal Insurance and Mitigation Administration, 500 C Street SW., Washington, DC 20472, (202) 646–2878, or (e-mail) *Michael.Grimm@fema.gov*.

SUPPLEMENTARY INFORMATION: The modified Base Flood Elevations are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified Base Flood Elevation determinations are available for inspection is provided.

Any request for reconsideration must be based on knowledge of changed conditions or new scientific or technical data.

The modifications are made pursuant to Section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR Part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified Base Flood Elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities.

The changes in Base Flood Elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Administrator, Federal Insurance and Mitigation Administration certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified Base Flood Elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This interim rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for Part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community
Arizona:					
Coconino	City of Flagstaff (00–09–745P).	Nov. 7, 2002, Nov. 14, 2002, *Arizona Daily Sun*.	The Honorable Joseph C. Donaldson, Mayor, City of Flagstaff, 211 West Aspen Avenue, Flagstaff, Arizona 86001.	Jan. 4, 2001	040020
Maricopa	Town of Cave Creek (00–09–495P).	Oct. 31, 2002, Nov. 7, 2002, *Arizona Business Gazette*.	The Honorable Vincent Francia, Mayor, Town of Cave Creek, Town Hall, 37622 North Cave Creek Road, Cave Creek, 85331.	Feb. 15, 2001	040129

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community
Maricopa	City of Chandler (01–09–006P).	Nov. 7, 2002, Nov. 14, 2002, *Arizona Republic*.	The Honorable Boyd Dunn, Mayor, City of Chandler, 55 North Arizona Place, Suite 3014, Chandler, Arizona 85225.	Dec. 13, 2000	040040
Maricopa	City of Goodyear (00–09–975P).	Nov. 6, 2002, Nov. 13, 2002, *West Valley View*.	The Honorable Bill Arnold, Mayor, City of Goodyear, 190 North Litchfield, Goodyear, Arizona 85338.	Feb. 15, 2001	040046
Maricopa	City of Phoenix (00–09–495P).	Nov. 7, 2002, Nov. 14, 2002, *Arizona Business Gazette*.	The Honorable Skip Rimsza, Mayor, City of Phoenix, 200 West Washington, 11th Floor, Phoenix, Arizona 85003–1611.	Feb. 15, 2001	040051
Maricopa	Unincorporated Areas (00–09–495P).	Nov. 7, 2002, Nov. 14, 2002, *Arizona Business Gazette*.	The Honorable Don Stapley, Chairman, Maricopa County, Board of Supervisors, 301 West Jefferson, 10th Floor, Phoenix, Arizona 85003.	Feb. 15, 2001	040037
California					
Monterey	Unincorporated Areas (02–09–869P).	Dec. 12, 2002, Dec. 19, 2002, *Californian*.	The Honorable Dave Potter, Chairman, Monterey County Board of Supervisors, P.O. Box 180 , Salinas, California 93902.	Mar. 20, 2003	060195
Sacramento	Unincorporated Areas (02–09–1169P).	Oct. 17, 2002, Oct. 24, 2002, *Daily Recorder*.	The Honorable Roger Niello, Chairman, Sacramento County Board of Supervisors, 700 H Street, Room 2450, Sacramento, California 95814.	Jan. 23, 2003	060262
San Diego	City of San Diego (02–09–1472X).	Dec. 4, 2002, Dec. 11, 2002, *San Diego Union Tribune*.	The Honorable Richard M. Murphy, Mayor, City of San Diego, 202 C Street, 11th Floor, San Diego, California 92101.	Nov. 22, 2002	060295
Santa Clara	Town of Los Gatos (01–09–159P).	Oct. 16, 2002, Oct. 23, 2002, *Los Gatos Weekly-Times*.	Mr. John Curtis, P.E. Director of Parks and Public Works, Town of Los Gatos, P.O. Box 949, Los Gatos, California 95031.	Jan. 22, 2003	060343
Santa Clara	Unincorporated Areas (01–09–159P).	Oct. 16, 2002, Oct. 23, 2002, *Los Gatos Weekly-Times*.	The Honorable Donald F. Gage, Chairman, Santa Clara County Board of Supervisors, East Wing, 10th Floor, 70 West Hedding Street, San Jose, California 95110.	Jan. 22, 2003	060337
Ventura	City of Camarillo (02–09–583P).	Oct. 24, 2002, Oct. 31, 2002, *Ventura County Star*.	The Honorable Jan McDonald, Mayor, City of Camarillo, 601 Carmen Drive, Camarillo, California 93010.	Jan. 30, 2003	065020
Ventura	City of Simi Valley (03–09–0051X).	Nov. 14, 2002, Nov. 24, 2002, *Ventura County Star*.	The Honorable William Davis, Mayor, City of Simi Valley, 2929 Tapo Canyon Road, Simi Valley, California 93063.	Nov. 6, 2002	060421
Ventura	Unincorporated Areas (02–09–1213P).	Oct. 31, 2002, Nov. 7, 2002, *Fillmore Gazette*.	The Honorable Frank Schillo, Chairman, Ventura County Board of Supervisors, 800 South Victoria Avenue, Ventura, California 93009.	Feb. 6, 2003	060413
Colorado:					
Adams	City of Commerce City (02–08–283P).	Oct. 24, 2002, Oct. 31, 2002, *Denver Post*.	The Honorable E.E. ''Casey'' Hayes, Mayor, City of Commerce City, 5291 East 60th Avenue, Commerce City, Colorado 80022.	Jan. 30, 2003	080006
Adams	City of Thornton (02–08–283P).	Oct. 24, 2002, Oct. 31, 2002, *Denver Post*.	The Honorable Noel Busck, Mayor, City of Thornton, 9500 Civic Center Drive, Thornton, CO 80229.	Jan. 30, 2003	080007
Adams	Unincorporated Areas (02–08–283P).	Oct. 24, 2002, Oct. 31, 2002, *Denver Post*.	The Honorable Martin Flaum, Chairman, Adams County Board of Commissioners, 450 South Fourth Avenue, Brighton, Colorado 80601.	Jan. 30, 2003	080001
Adams, Boulder, Jefferson, Weld.	City of Broomfield (02–08–156P).	Nov. 20, 2002, Nov. 27, 2002, *Denver Post*.	The Honorable Karen Stuart, Mayor, City and County of Broomfield, One Des Combes Drive, Broomfield, Colorado 80020.	Feb. 26, 2003	085073
Boulder	City of Boulder (02–08–340P).	Nov. 21, 2002, Nov. 28, 2002, *Denver Post*.	The Honorable William R. Toor, Mayor, City of Boulder, 1777 Broadway, Boulder, Colorado 80306.	Feb. 27, 2003	080024

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community
Douglas	Town of Parker (02–08–171P).	Oct. 10, 2002, Oct. 17, 2002, *Denver Post*.	The Honorable Gary Lasater, Mayor, Town of Parker, 20120 East Main Street, Parker, Colorado 80138.	Jan. 16, 2003	080310
Douglas	Unincorporated Areas (02–08–171P).	Oct. 10, 2002, Oct. 17, 2002, *Denver Post*.	The Honorable James R. Sullivan, Chairman, Douglas County Board of Commissioners, 100 Third Street, Castle Rock, Colorado 80104.	Jan. 16, 2003	080049
Garfield	City of Rifle (02–08–123P).	Dec. 26, 2002, Jan. 2, 2003, *Citizen Telegram*.	The Honorable Keith Lambert, Mayor, City of Rifle, 202 Railroad Avenue, Rifle, Colorado 81650.	Dec. 4, 2002	085078
Larimer	City of Fort Collins (01–08–092P).	Nov. 7, 2002, Nov. 14, 2002, *Fort Collins Coloradoan*.	The Honorable Ray Martinez, Mayor, City of Fort Collins, P.O. Box 580, Fort Collins, Colorado 80522–0580.	May 30, 2001	080102
Hawaii.					
Hawaii	Hawaii County (99–09–680P).	Nov. 7, 2002, Nov. 14, 2002, *Hawaii Tribune Herald*.	The Honorable Harry Kim, Mayor, Hawaii County, 25 Aupuni Street, Hilo, Hawaii 96720.	Aug. 15, 2000	155166
Honolulu	City and County of Honolulu (00–09–244P).	Nov. 7, 2002, Nov. 14, 2002, *Honolulu Star Bulletin*.	The Honorable Jeremy Harris, Mayor, City and County of Honolulu, 530 South King Street, Honolulu, Hawaii 96813.	Feb. 1, 2001	150001
Missouri:.					
Clay	Unincorporated Areas (03–07–0112P).	Jan. 2, 2003, Jan. 9, 2003, *Kearney Courier*.	The Honorable Thomas Brandon, Presiding Commissioner, Clay County, Clay County Courthouse, One Courthouse Square, Liberty, Missouri 64068.	Apr. 24, 2003	290086
Montana:.					
Gallatin	City of Bozeman (00–08–367P).	Nov. 7, 2002, Nov. 14, 2002, *Bozeman Daily Chronicle*.	The Honorable Steven Kirchhoff, Mayor, City of Bozeman, P.O. Box 1230, Bozeman, Montana 59771–1230.	Dec. 20, 2000	300028
Texas:.					
Bexar	City of San Antonio (00–06–862P).	Nov. 7, 2002, Nov. 14, 2002, *San Antonio Express News*.	The Honorable Ed Garza, Mayor, City of San Antonio, P.O. Box 839966, San Antonio, Texas 78283–3966.	Apr. 2, 2001	480045
Utah:.					
Washington	City of St. George (02–08–101P).	Dec. 19, 2002, Dec 26, 2002, *Spectrum*.	The Honorable Daniel McArthur, Mayor, City of St. George, 175 East 200 North, St. George, Utah 84770.	Mar. 27, 2003	490177
Washington:.					
Spokane	Unincorporated Areas (02–10–614P).	Nov. 21, 2002, Nov. 28, 2002, *Spokesman-Review*.	Ms. Francine Boxer, Chief Executive Officer, Spokane County, 1116 West Broadway Avenue, Spokane, Washington 99260.	Mar. 25, 2003	530174

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance'')

Dated: January 28, 2003.

Anthony S. Lowe,

Administrator, Federal Insurance and Mitigation Administration.

[FR Doc. 03–3184 Filed 2–7–03; 8:45 am]

BILLING CODE 6718–04–U

FEDERAL COMMUNICATIONS COMISSION

47 CFR Part 54

[CC Docket No. 96–45; DA 03–24]

Federal-State Joint Board on Universal Service

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission's (Commission) Wireline Competition Bureau (Bureau) adopts the Delphi version of the forward-looking cost model with certain incorporated technical improvements, which has been translated from Turbo-Pascal computer language, for calculating high-cost universal service support for non-rural carriers. To avoid the possibility of two successive changes in support amounts within a relatively short period of time, the Bureau defers calculating support for non-rural carriers using the Delphi version of the forward-looking cost model with incorporated technical improvements until the effective date of a Commission order in the separate proceeding addressing the non-rural high-cost support methodology adopted in the Ninth Report and Order, which was remanded to the Commission by the United States Court of Appeals for the Tenth Circuit.

DATES: Effective March 12, 2003.

FOR FURTHER INFORMATION CONTACT: Katie King or Thomas Buckley, Attorneys, Wireline Competition Bureau, Telecommunications Access Policy Division, (202) 418–7400, TTY (202) 418–0484.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order in CC Docket No. 96–45 released on January 7, 2003. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY–A257, 445 12th Street, SW., Washington, DC 20554.

I. Introduction

1. The Bureau adopts the Delphi version of the forward-looking cost model, which has been translated from Turbo-Pascal computer language, for calculating high-cost universal service support for non-rural carriers. The Bureau also finds that certain technical improvements are necessary to ensure that the forward-looking cost mechanism operates as designed in the *Fifth Report and Order,* 63 FR 63993, November 18, 1998. To avoid the possibility of two successive changes in support amounts within a relatively short period of time, the Bureau shall defer calculating support for non-rural carriers using the Delphi version of the forward-looking cost model with incorporated technical improvements until the effective date of an order in the separate proceeding addressing the non-rural high-cost support methodology adopted in the *Ninth Report and Order*, 64 FR 67416, December 1, 1999, which was remanded to the Commission by the United States Court of Appeals for the Tenth Circuit. The Bureau finds, however, that adopting the Delphi version with incorporated technical improvements at this time is appropriate to enable its staff to perform necessary work to determine cost per loop estimates used to calculate high-cost support and to allow the Commission to consider such estimates in conjunction with its review of the Federal-State Joint Board on Universal Service's (Joint Board) recommendations in the *Ninth Report and Order* remand proceeding.

II. Discussion

2. In this Order, the Bureau determines that it should use the Delphi version of the forward-looking cost model for calculating and targeting support for non-rural carriers. The Bureau also finds that the technical improvements incorporated into the Delphi version of the model and discussed herein are necessary and appropriate to ensure that the forward-looking cost mechanism operates as designed in the *Fifth Report and Order.* As discussed below, calculating support using the Delphi version of the cost model with incorporated technical improvements could lead to changes in support amounts. The *Ninth Report and Order* remand proceeding also could lead to modifications of the non-rural high-cost support methodology that, in turn could lead to changes within a relatively brief time in support amounts. To avoid the possibility of two successive changes in support amounts resulting from adoption of the Delphi version with incorporated technical improvements and thereafter a final Commission action in the *Ninth Report and Order* remand proceeding, the Bureau shall defer calculating support for non-rural carriers using the Delphi version with incorporated technical improvements until the effective date of an order in the *Ninth Report and Order* remand proceeding.

3. *Translation to Delphi Computer Language.* The Bureau concludes that it is appropriate to use the outside plant portion of the forward-looking cost model that has been translated to Delphi computer language. Delphi, essentially an upgraded version of the previously used Turbo-Pascal language, is a more advanced and easier-to-use computer language than Turbo-Pascal. In particular, unlike Turbo-Pascal, Delphi computer language allows a user to step through the source code line-by-line. This improvement will allow the Bureau and interested parties to better understand and follow the logic of the model in reaching its results. In addition, the Delphi computer language processes data more quickly and is more adaptable to the Windows operating system than Turbo-Pascal. As such, translation to Delphi will enable the Bureau and interested parties to more easily use and analyze the cost model and its results.

4. The Bureau deferred adoption of Delphi computer language for the model last year in part to allow it to consider arguments that it should instead adopt a version of the outside plant portion of the model in Visual Basic computer language submitted by Qwest. Based on an examination of the record developed in response to the *Delphi Public Notice,* 66 FR 34447, June 28, 2001, the Bureau does not adopt the Visual Basic model submitted by Qwest for the reasons stated below. Because Delphi computer language uses the same logic in its programming steps as Turbo-Pascal, the translation to Delphi does not fundamentally change the organization of the model logic. Interested parties and Bureau staff already have invested a substantial amount of time understanding, testing, and fine tuning the Turbo-Pascal and Delphi computer code. Visual Basic, on the other hand, is an entirely different computer language. As a result, the Bureau finds it would be less reasonable to adopt the Visual Basic version than the Delphi translation. Rather, on this record, the Bureau finds it appropriate to use the outside plant portion of the model that has been translated to Delphi computer language.

5. *Technical Improvements.* As noted above, the Commission foresaw that technical improvements would be necessary to ensure that the model operates as designed and instructed the Bureau to implement such improvements where necessary and appropriate. After posting a Delphi version of the model, the Bureau sought recommendations on improvements to that Delphi version, incorporated technical improvements where necessary, and then posted a revised Delphi version of the model on the Bureau's website. In the *2002 Line Counts Update Order,* 67 FR 3118, January 23, 2002, the Bureau stated that more time was needed to study the effect these improvements would have on high-cost support calculations.

6. After investigating the various technical improvements incorporated into the posted Delphi version of the model, the Bureau discovered that two changes in particular impacted cost estimates generated by the model, which in turn could affect high-cost support calculations. First, a correction was made to locate drop terminals using the 360 feet square grid cell assumption adopted in the *Fifth Report and Order,* 63 FR 63993, November 18, 1998, rather than 1000 feet square grid cells. This correction places drop terminals closer to customer locations and results in an overall decrease in distribution cable and structure costs. Second, Bureau staff corrected the coding that caused the model to read the wrong row of input tables for drop terminal, manhole, and service area interfaces (SAIs) costs. This coding error caused the model to retrieve incorrect values for these outside plant inputs. Correcting this coding error results in higher costs in certain wire centers.

7. The Bureau finds that implementation of these technical improvements is necessary and appropriate to ensure that the model operates as designed in the *Fifth Report and Order.* The Bureau analysis indicates that these technical improvements cause small changes in

cost estimates generated by the model. For instance, using year-end 2000 line counts as input values, the combined effect of these technical improvements would cause the nationwide average cost per line to increase by less than $0.03 for 2002. However, the effect on statewide average cost per line varies by state. The statewide average cost per line increases in states containing wire centers with higher density zones because such service areas require more underground structure, larger SAIs, and larger drop terminals. By contrast, the average cost per line for states containing wire centers with lower density zones decreases, relative to the nationwide average, because their service areas require less underground structure, smaller SAIs, and fewer large drop terminals. Under the benchmark methodology adopted in the *Ninth Report and Order,* minor changes in nationwide or statewide average costs will affect non-rural high-cost support amounts.

8. The Bureau shall defer calculating support for non-rural carriers using the Delphi version of the cost model with incorporated technical improvements until the effective date of an order in the *Ninth Report and Order* remand proceeding. The *Ninth Report and Order* remand proceeding could lead to modifications to the non-rural high-cost support methodology that, in turn, would lead to changes in support amounts. Calculating support using the Delphi version of the cost model with incorporated technical improvements likewise could lead to changes in support amounts. Section 254(b)(5) of the Communications Act of 1996 Act states that the universal support mechanism should be specific and predictable. Consistent with this principle, the Bureau finds that coordinating the determination of support for non-rural carriers using the revised Delphi version of the cost model, incorporating the technical improvements described above, with the effective date of an order in the *Ninth Report and Order* remand proceeding will avoid the possibility of two successive changes in the model's calculations and support amounts within a relatively short period of time. Specifically, the Delphi version of the model with incorporated technical improvements will be used for purposes of estimating forward-looking costs and determining support for non-rural carriers following the effective date of an order in the *Ninth Report and Order* remand proceeding. In the intervening interim period, non-rural support shall continue to be based on cost estimates of the Turbo-Pascal version of the cost model using the data updates adopted in the *2002 Line Counts Update Order*. In addition, the Bureau will continue to adjust support amounts calculated using the current model's cost estimates to reflect the lines reported by non-rural carriers each quarter. The Bureau finds that adopting the Delphi version with incorporated technical improvements at this time is appropriate to enable the staff to perform necessary work to determine cost estimates under this version. Accompanying this Order is a Public Notice seeking comment on updating line counts and other input values for the Delphi version of the cost model consistent with the framework adopted in the *2001 and 2002 Line Counts Update Orders,* 65 FR 81759, December 27, 2000. Such action will enable the Commission to consider such estimates in conjunction with its consideration of the Joint Board recommendations in the *Ninth Report and Order* remand proceeding.

III. Ordering Clause

9. *It is ordered* pursuant to the authority contained in sections 1–4, 201–205, 214, 218–220, 254, 303(r), 403, and 410 of the Communications Act of 1934, as amended, 47 U.S.C. 151–154, 201–205, 214, 218–220, 254, 303(r), 403, and 410, this Order *is adopted.*

10. *It is further ordered* that this Order will be effective March 12, 2003.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–3111 Filed 2–7–03; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register

Vol. 68, No. 27

Monday, February 10, 2003

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 890

RIN 3206–AJ42

Financial Sanctions of Health Care Providers Participating in the Federal Employees Health Benefits Program

AGENCY: Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: The Office of Personnel Management (OPM) is proposing to amend its regulations on administrative sanctions of health care providers participating in the Federal Employees Health Benefits Program (FEHBP). This proposed rule addresses the financial sanctions provisions of Section 2 of Public Law 105–266, the Federal Employees Health Care Protection Act of 1998, which authorize OPM to impose civil monetary penalties and financial assessments against health care providers who commit certain types of violations against the FEHBP. In concert with the previously-issued regulations on debarment and suspension authorities, this proposed rule will afford OPM a full range of administrative remedies to deter and rectify provider misconduct within FEHBP. The regulatory framework established by this issuance provides appropriate due process protections to assure that the amounts of financial sanctions are assessed through a consistent and equitable process, the Government's financial interests are fully protected, and financial sanctions are imposed only after an opportunity for an administrative hearing on all facts material to the basis for the sanctions.

DATES: Submit comments on or before April 11, 2003.

ADDRESSES: Send or deliver written comments to David Cope, U.S. Office of Personnel Management, 1900 E Street NW., Room 6400, Washington, DC 20415, or submit comments electronically to *debar@opm.gov.*

FOR FURTHER INFORMATION CONTACT: David Cope, by telephone at 202–606–2851, by FAX at 202–606–2153, or by e-mail at *debar@opm.gov.*

SUPPLEMENTARY INFORMATION:

Background

Section 2 of the Federal Employees Health Care Protection Act of 1998 (Pub. L. 105–266), enacted a comprehensive set of administrative sanctions authorities for OPM to use in combating health care provider fraud within the FEHBP. These authorities fall into two broad categories—exclusion, comprising suspension and debarment from participation in FEHBP, and financial sanctions, comprising civil monetary penalties and financial assessments.

On December 12, 2001, OPM published proposed regulations at 66 FR 64160 to implement the exclusion-based authorities. The current issuance contains proposed regulations for the financial sanctions authorities. When issued as final rules, the two regulatory packages shall fully implement all of the administrative sanctions enacted by Pub. L. 105–266.

Administrative sanctions enable an agency to protect its financial and program interests against individuals or entities that have committed certain types of actionable violations specified by statute. In addition, health care provider sanctions also protect the health care interests of persons covered through the FEHBP. Both of these interests are specifically recognized by the proposed regulations as principal objectives of sanctions activities.

Exclusion-related sanctions recognize past misconduct and protect against future violations by removing the subject of the sanction from further participation in FEHBP. (In the context of the FEHBP sanctions statute, ''participation'' means receiving funds. Thus, an excluded provider may treat FEHBP covered persons, but may not be paid FEHBP funds for any items or services provided after the effective date of the exclusion.)

Financial sanctions have similar ''look back'' and ''look forward'' purposes. Pub. L. 105–266 established two categories of financial sanctions—assessments and civil monetary penalties. As stated in § 890.1060(b) of the proposed rule, assessments are intended to recognize all of the losses, costs, and damages OPM incurred as the result of a provider's wrongful conduct, although the amount assessed is not limited by the dollar value of those items. Civil monetary penalties are lump-sum amounts that, while computed by reference to improper claims, are intended principally to deter future violations.

Section 890.1060(e) states that financial sanctions may be imposed in addition to all other criminal, civil, and administrative remedies that any state or Federal agency may apply to the same conduct by a provider.

Bases for Financial Sanctions

Pub. L. 105–266 sets forth three bases for imposing financial sanctions. All relate in some degree either to claims actually filed with FEHBP carriers or to conduct associated with claims, even if no claim was filed. In contrast to exclusion-based sanctions, where the underlying violations need not have affected FEHBP, financial sanctions may be imposed only for violations that directly involve FEHBP enrollees, carriers, or funds.

As outlined in § 890.1061 of the proposed rule, the bases for financial sanctions are (1) fraudulent or improper claims; (2) false or misleading statements in or about claims; and (3) failure to provide claims-related information that is required by law to be disclosed.

Imposing Financial Sanctions

While some exclusion-based sanctions are mandatory (*i.e.,* OPM must debar a provider who commits certain types of violations), imposition of any financial sanction is always permissive with the debarring official. Sections 890.1062(b) through (d) identify the factors that the debarring official must consider in deciding whether to impose financial sanctions in a given case. Most of these factors are identified specifically by Pub. L. 105–266. We have added § 890.1062(d) to reflect the particular importance OPM attaches to protecting FEHBP covered persons from untrustworthy providers.

Amounts of Financial Sanctions

Section 890.1063 reflects the statutory limits on amounts of financial sanctions. Assessments may not exceed twice the amount claimed for each item or service ''involved'' in the claims on which the assessment is based. Civil monetary penalties may not exceed

$10,000 for each ''involved'' item or service. As the statute makes clear, penalties and assessments may be imposed concurrently for the same violations.

Setting the Amount of Financial Sanctions Within Statutory Limits

Federal courts have regularly upheld the use of financial sanctions authority in health care claims cases to produce a total of assessments and penalties that substantially exceeds the amount of Federal funds that had been paid improperly. Thus, the debarring official has authority to set sanctions amounts across very wide permissible limits, and decisions regarding the amounts may carry significant financial consequences for providers. Section 890.1064 is intended to provide the guidance necessary for the debarring official to exercise this authority in an equitable and consistent manner. Section 890.1064(b) sets the overall policy context for determining amounts of financial sanctions, including recovery of all damages, losses, and costs incurred by OPM as a result of sanctionable violations, and imposition of an additional penalty amount to deter future violations. Section 890.1064(c) emphasizes that ''damages, losses, and costs'' are to be given the broadest possible interpretation. Section 890.1064(d) summarizes the factors that the debarring official must consider in determining the amount of financial sanctions. These consist of (1) the factors identified in § 890.1062 as material to determining whether to impose financial sanctions; (2) the level of aggravation or mitigation reflected in the circumstances of the case; (3) the need to deter future misconduct; and (4) the provider's financial situation. This latter factor is not referred to in Pub. L. 105–266, but the concept appears in several other agencies' financial sanctions regulations, including the Department of Health and Human Services' Medicare provider sanctions authorities. Section 890.1064(e) addresses aggravating and mitigating factors as a series of benchmarks, describing the types of violations that would warrant assessments and penalties at the higher and lower ends of the statutory range.

Procedures

The procedures for proposing and imposing financial sanctions generally mirror those used for permissive debarments. OPM initiates a financial sanction action by sending written notice of the proposed sanction. As is the case with exclusion-based sanctions, there is a 6-year limitation period for proposed financial sanctions. Section 890.1066 explains the limitation period and specifies the contents and methods of delivery of the notice. Section 890.1067 sets out the options available to providers upon receiving a notice of proposed sanctions. In brief, the provider may either formally contest the sanctions or seek to settle or compromise them through negotiation with the debarring official. As indicated in § 890.1068, if the subject of the proposed sanction takes no action during the 30-day notice period, OPM may immediately finalize the sanction, without further right of appeal or recourse by the provider.

Contesting Proposed Financial Sanctions

Sections 890.1069 through 1071 address contests of proposed financial sanctions. They incorporate by reference most of the provisions of §§ 890.1022 through 1029, regarding contests of proposed permissive debarments.

As indicated by § 890.1069, the subject of the proposed sanction may contest it simply by submitting documents to the debarring official, or, at the provider's option, may also make a personal appearance, with or without counsel, to present testimony and oral arguments.

Section 890.1070(a) states that (as is the case in contests of proposed debarments), facts previously adjudicated in due process proceedings (*e.g.,* criminal or civil proceedings, administrative hearings, or actions that constitute waiver of the right to a due process proceeding) are binding on the debarring official in deciding the contest.

Section 890.1070(b) sets ''preponderance of the evidence'' as the standard of proof for decisions on contests.

Section 890.1070(c) states that the amounts of penalties and assessments proposed in OPM's notice to the provider effectively establish a ceiling on the size of financial sanctions that may ultimately be imposed. The debarring official cannot increase the proposed amount under any circumstances, and has the discretion to impose a lower amount if evidence in the administrative record so warrants.

Section 890.1071 applies to contests of financial sanctions the same decisionmaking methodologies established for contests of proposed debarments in §§ 890.1026 through 1029. The debarring official shall decide the contest without a further proceeding if there are no disputed material facts. If material facts are in dispute, the debarring official must refer them to a hearing officer who has had no prior involvement in the case, to conduct a due process hearing. The hearing process under § 890.1071(c) tracks that used to resolve disputed material facts in contests of proposed debarments. The hearing officer reports the facts found to the debarring official, who must accept and apply these findings in reaching a final decision on the contest.

Appeals of Final Decisions

Section 890.1072 states the right of judicial appeal provided in the FEHBP sanctions statute. Any provider on whom a final decision of the debarring official imposes any financial sanction may appeal to the appropriate U.S. district court, unless the provider's ability to appeal has been foreclosed by their failure to administratively contest a proposed sanction in a timely manner.

Collecting Payment of Financial Sanctions

Section 890.1073 outlines the methods OPM shall use to collect financial sanctions. These include a mutually agreed payment schedule and other administrative debt collection procedures, including offset against monies owed by other Federal agencies. If administrative efforts do not resolve the debt, 5 U.S.C. 8902a(i) authorizes the Department of Justice to file a civil lawsuit in the appropriate U.S. district court to enforce payment. As stated in 890.1073(e), the statute further specifies that monies collected in respect of financial sanctions are to be paid to the Employees Health Benefits Fund.

Regulatory Flexibility Act

I certify that this proposed regulation will not have a significant economic impact on a substantial number of small entities, because the financial sanctions are limited to the portion of health care providers' activities involving transactions with the Federal Employees Health Benefits Program.

Executive Order 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

List of Subjects in 5 CFR Part 890

Administrative practice and procedure, Government employees, Health facilities, Health insurance, Health professions, Hostages, Iraq, Kuwait, Lebanon, Military personnel, Reporting and recordkeeping requirements, Retirement.

Office of Personnel Management,

Kay Coles James,

Director.

Accordingly, OPM proposes to amend part 890 of title 5, Code of Federal Regulations as follows:

PART 890—FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM

1. The authority citation for Part 890 continues to read as follows:

Authority: 5 U.S.C. 8913; § 890.803 also issued under 50 U.S.C. 403(p), 22 U.S.C. 4069c and 4069c–1; subpart L also issued under sec 599C of Pub. L. 101–513, 104 Stat. 2064, as amended; § 890.102 also issued under sections 11202(f), 11232(e), 11246(b) and (c) of Pub. L. 105–33, 111 Stat 251; and section 721 of Pub. L. 105–261, 112 Stat. 2061.

2. In Subpart J, §§ 890.1060 through 1073 are added to read as follows:

Subpart J—Administrative Sanctions Imposed Against Health Care Providers

Sec.

Civil Monetary Penalties and Financial Assessments

890.1060 Purpose and scope of civil monetary penalties and assessments.
890.1061 Bases for penalties and assessments.
890.1062 Deciding whether to impose penalties and assessments.
890.1063 Maximum amounts of penalties and assessments.
890.1064 Determining the amounts of penalties and assessments to be imposed on a provider.
890.1065 Deciding whether to suspend or debar a provider in a case that also involves penalties and assessments.
890.1066 Notice of proposed penalties and assessments.
890.1067 Provider contests of proposed penalties and assessments.
890.1068 Effect of not contesting proposed penalties and assessments.
890.1069 Information the debarring official shall consider in deciding a provider's contest of proposed penalties and assessments.
890.1070 Burdens of proof and standards of evidence in contests of proposed penalties and assessments.
890.1071 Deciding contests of proposed penalties and assessments.
890.1072 Further appeal rights after final decision on penalties and assessments.
890.1073 Collecting penalties and assessments.

Civil Monetary Penalties and Financial Assessments

§ 890.1060 Purpose and scope of civil monetary penalties and assessments.

(a) *Civil monetary penalty.* A civil monetary penalty is an amount that OPM may impose on a health care provider who commits one of the violations listed in § 890.1061. Penalties are intended to protect the integrity of FEHBP by deterring repeat violations by the same provider and by reducing the likelihood of future violations by other providers.

(b) *Assessment.* An assessment is an amount that OPM may impose on a provider, calculated by reference to the claims involved in the underlying violations. Assessments are intended to recognize monetary losses, costs, and damages sustained by OPM as the result of a provider's violations.

(c) *Use of terminology.* In §§ 890.1060 through 1072

Penalty means ''civil monetary penalty;'' and

Penalties and assessments may connote the singular or plural forms of either of those terms, and may represent them in either the conjunctive or disjunctive sense.

(d) *Relationship to debarment and suspension.* In addition to imposing penalties and assessments, OPM may concurrently debar or suspend a provider from participating in FEHBP on the basis of the same violations.

(e) *Relationship to other penalties provided by law.* The penalties, assessments, debarment, and suspension imposed by OPM are in addition to any other penalties that may be prescribed by law or regulation administered by an agency of the Federal Government or any State.

§ 890.1061 Bases for penalties and assessments.

(a) *Improper claims.* OPM may impose penalties and assessments on a provider if a claim presented by that provider for payment from FEHBP funds meets the criteria set forth in 5 U.S.C. 8902a(d)(1).

(b) *False or misleading statements.* OPM may impose penalties and assessments on a provider who makes a false statement or misrepresentation as set forth in 5 U.S.C. 8902a(d)(2).

(c) *Failing to provide claims-related information.* OPM may impose penalties and assessments on a provider who knowingly fails to provide claims-related information as otherwise required by law.

§ 890.1062 Deciding whether to impose penalties and assessments.

(a) *Authority of debarring official.* The debarring official has discretionary authority to impose penalties and assessments in accordance with 5 U.S.C. 8902a and this subpart.

(b) *Factors to be considered.* In deciding whether to impose penalties and assessments against a provider that has committed one of the violations identified in § 890.1061, OPM shall consider:

(1) The number and frequency of the provider's violations;

(2) The period of time over which the violations were committed;

(3) The provider's culpability for the specific conduct underlying the violations;

(4) The nature of any claims involved in the violations and the circumstances under which the claims were presented to FEHBP carriers;

(5) The provider's history of prior offenses or improper conduct, including any actions that could have constituted a basis for a suspension, debarment, penalty, or assessment by any Federal or State agency, whether or not any sanction was actually imposed;

(6) Any monetary damages, losses, and costs, as described in § 890.1064(c), attributable to the provider's violations; and

(7) Such other factors as justice may require.

(c) *Additional factors when penalty or assessment is based on § 890.1061(b) or (c).* In the case of violations involving false or misleading statements or the failure to provide claims-related information, OPM shall also consider:

(1) The nature and circumstances of the provider's failure to properly report information; and

(2) The materiality and significance of the false statements or misrepresentations the provider made or caused to be made, or the information that the provider knowingly did not report.

§ 890.1063 Maximum amounts of penalties and assessments.

OPM may impose penalties and assessments in amounts not to exceed those set forth in 5 U.S.C. 8902a(d).

§ 890.1064 Determining the amounts of penalties and assessments to be imposed on a provider.

(a) *Authority of debarring official.* The debarring official has discretionary authority to set the amounts of penalties and assessments in accordance with law and this subpart.

(b) *Objectives of penalties and assessments.* In setting the amounts of penalties and assessments to be imposed on a provider, the debarring official shall be guided by the overall objectives of:

(1) Assuring that the United States is fully compensated for all damages, losses, and costs associated with a provider's violations; and

(2) Deterring future violations by the provider on whom the penalties and

assessments were imposed, and other health care providers.

(c) *Determining damages, losses, and costs.* In determining the appropriate amount of compensation due to the United States, OPM shall include, at the minimum:

(1) Amounts wrongfully paid from FEHBP funds as the result of a provider's violations and interest on those amounts, at rates determined by the Department of the Treasury;

(2) All costs incurred by OPM and FEHBP carriers in investigating a provider's sanctionable misconduct; and

(3) All costs associated with administrative review of a case, including every phase of the administrative sanctions process described by this subpart.

(d) *Factors considered in determining amounts of penalties and assessments.* In determining the amounts of penalties and assessments to impose on a provider OPM shall consider:

(1) All of the factors set forth in § 890.1062(b) through (d);

(2) The provider's personal financial situation, or, in the case of violations committed by an entity, the entity's financial situation;

(3) The Government's interests in deterring future misconduct by providers; and

(4) The presence of aggravating or less serious circumstances, as described in paragraphs (e)(1) through (e)(7) of this section.

(e) *Aggravated and less serious circumstances.* The presence of aggravating circumstances may cause OPM to impose penalties and assessments at a higher level within the authorized range, while less serious violations may warrant sanctions of relatively lower amounts. Paragraphs (e)(1) through (e)(7) of this section provide examples of aggravated and less serious violations. These examples are illustrative only, and are not intended to represent an exhaustive list of all possible types of violations.

(1) The existence of many separate violations, or of violations committed over an extended period of time, constitutes an aggravating circumstance. OPM may consider conduct involving a small number of violations, committed either infrequently or within a brief period of time, to be less serious.

(2) Violations for which a provider had direct knowledge of the material facts (for example, submitting claims that the provider knew to contain false, inaccurate, or misleading information), or for which the provider did not cooperate with OPM's or an FEHBP carrier's investigations, constitute aggravating circumstances. OPM may consider violations where the provider did not have direct knowledge of the material facts, or in which the provider cooperated with post-violation investigative efforts, to be less serious.

(3) Violations resulting in substantial damages, losses, and costs to OPM, the FEHBP, or FEHBP covered persons constitute aggravating circumstances. Violations producing a small or negligible overall financial impact may be considered to be less serious.

(4) A pattern of conduct reflecting numerous improper claims, high-dollar false claims, or improper claims involving several types of items or services constitutes aggravating circumstances. OPM may consider a small number of improper claims for relatively low dollar amounts to be less serious.

(5) Every violation involving any harm, or the risk of harm, to the health and safety of an FEHBP enrollee, shall be considered an aggravating circumstance.

(6) Any prior violation described in § 890.1062(b)(5) constitutes an aggravating circumstance. OPM may consider repeated or multiple prior violations to represent an especially serious form of aggravating circumstances.

(7) OPM may consider other circumstances or actions to be aggravating or less serious within the context of an individual case, as the interests of justice require.

§ 890.1065 Deciding whether to suspend or debar a provider in a case that also involves penalties and assessments.

In a case where both penalties and assessments and debarment are proposed concurrently, OPM shall decide the proposed debarment under the same criteria and procedures as if it had been proposed separately from penalties and assessments.

§ 890.1066 Notice of proposed penalties and assessments.

(a) *Written notice.* OPM shall inform a provider of proposed penalties and assessments by written notice, sent via certified mail with return receipt requested to the provider's last known street or post office address. OPM may, at its discretion, use an express service that furnishes a verification of delivery instead of postal mail.

(b) *Statutory limitations period.* OPM shall send the notice to the provider within 6 years of the date on which the claim underlying the proposed penalties and assessments was presented to an FEHBP carrier. If the proposed penalties and assessments do not involve a claim presented for payment, OPM shall send the notice within 6 years of the date of the actions on which the proposed penalties and assessments are based.

(c) *Contents of the notice.* OPM's notice shall contain, at a minimum:

(1) The statement that OPM proposes to impose penalties and/or assessments against the provider;

(2) Identification of the actions, conduct, and claims that comprise the basis for the proposed penalties and assessments;

(3) The amount of the proposed penalties and assessments, and an explanation of how OPM determined those amounts;

(4) The statutory and regulatory bases for the proposed penalties and assessments; and

(5) Instructions for responding to the notice, including specific explanations regarding:

(i) the provider's right to contest the imposition and/or amounts of penalties and assessments before they are formally imposed; and

(ii) OPM's right, if the provider does not contest the proposed penalties and assessments within 30 days of the date he receives the notice, to implement them immediately without further administrative appeal or recourse.

(d) *Proposing debarment in the same notice.* OPM may propose a provider's debarment in the same notice that also proposes penalties and assessments. In this case, the notice shall also provide the elements of information required to appear in a notice of proposed debarment under § 890.1006(b).

(e) *Procedures if the notice cannot be delivered.* OPM shall apply the provisions of § 890.1006(f) if the notice of proposed penalties and assessments cannot be delivered as originally addressed.

(f) *Sending notice by electronic means.* [Reserved]

§ 890.1067 Provider contests of proposed penalties and assessments.

(a) *Contesting proposed sanctions.* A provider may formally contest the proposed penalties and assessments by sending a written notice to the debarring official within 30-days after receiving the notice described in § 890.1066. The debarring official shall apply the administrative procedures set forth in §§ 890.1069 through 1071 to decide the contest.

(b) *Contesting debarments and financial sanctions concurrently.* If OPM proposes debarment and penalties and assessments in the same notice, the provider may contest both the debarment and the financial sanctions in the same proceeding. If the provider pursues a combined contest, the requirements set forth in §§ 890.1022 through 1024, as well as this section, apply.

(c) *Settling or compromising proposed sanctions.* As part of or in lieu of a contest, a provider may offer to settle the proposed penalties and assessments. The debarring official has authority to settle or compromise proposed sanctions at any time before issuing a final decision under § 890.1071.

§ 890.1068 Effect of not contesting proposed penalties and assessments.

(a) *Proposed sanctions may be implemented immediately.* If a provider does not inform the debarring official of his intention to contest proposed penalties and assessments within the 30-day period set forth by § 890.1067(a), OPM may implement the proposed sanctions immediately, without further procedures.

(b) *Debarring official sends notice after implementing sanctions.* The debarring official shall send the provider written notice, via certified return receipt mail or express delivery service, stating:

(1) The amount of penalties and assessments imposed;

(2) The date on which they were imposed; and

(3) The means by which the provider may pay the penalties and assessments.

(c) *No appeal rights.* A provider may not pursue a further administrative or judicial appeal of the debarring official's final decision implementing any sanctions unless a timely contest was filed in response to OPM's notice under § 890.1066.

§ 890.1069 Information the debarring official shall consider in deciding a provider's contest of proposed penalties and assessments.

(a) *Documentary material and written arguments.* As part of the contest, a provider shall furnish a written statement of reasons why the proposed penalties and assessments should not be imposed and/or why the amounts proposed are excessive.

(b) *Mandatory disclosures.* In addition to any other information submitted during the contest, the provider shall inform the debarring official in writing of:

(1) Any existing, proposed, or prior exclusion, debarment, penalty, assessment, or other sanction that was imposed by a Federal, State, or local government agency, including any administrative agreement that purports to affect only a single agency; and

(2) Any current or prior criminal or civil legal proceeding that was based on the same facts as the penalties and assessments proposed by OPM.

(c) *In-person appearance.* A provider may request a personal appearance (in person, by telephone conference, or through a representative) to provide testimony and oral arguments to the debarring official.

§ 890.1070 Burdens of proof and standards of evidence in contests of proposed penalties and assessments.

(a) *Previously determined facts.* Any facts relating to the basis for the proposed penalties and assessments that were determined in a prior due process proceeding are binding on the debarring official in deciding the contest. Prior due process proceedings are those set forth in § 890.1025(a)(1) through (4).

(b) *Preponderance of the evidence.* To impose penalties and assessments, the debarring official must find that the preponderance of the evidence in the entire official record demonstrates that the provider committed a sanctionable violation described in § 890.1061.

(c) *Final decision regarding the amount of penalties and assessments.* If the preponderance of the evidence establishes that a provider committed a sanctionable violation for which penalties and assessments may be imposed, the debarring official may impose financial sanctions in amounts not exceeding those proposed in the notice issued to the provider under § 890.1066.

§ 890.1071 Deciding contests of proposed penalties and assessments.

(a) *Debarring official reviews entire official record.* After the provider submits the information and evidence authorized or required by § 890.1069, the debarring official shall review the entire official record to determine if the contest can be decided without additional administrative proceedings, or if an evidentiary hearing is required to resolve disputed material facts.

(b) *Deciding the contest without further proceedings.* To decide the contest without further administrative proceedings, the debarring official must determine that the evidentiary record contains no *bona fide* dispute as to material facts. A ''material fact'' is a fact essential to determining whether a provider committed a sanctionable violation for which penalties and assessments may be imposed. If there are no *bona fide* disputed material facts, the debarring official shall apply the provisions of § 890.1070 to reach a final decision of the contest.

(c) *Bona fide dispute about material facts.* If the debarring official determines that the official record contains a *bona fide* dispute about any fact material to the basis for the proposed penalties and assessments, a fact-finding hearing shall be held to resolve the disputed facts. The provisions of §§ 890.1027(b) and (c), 1028, and 1029(a) and (b) govern such hearings.

(d) *Debarring official's decision after fact-finding hearing.* After receiving the results of the fact-finding hearing, the debarring official shall apply the provisions of § 890.1070 to reach a final decision of the contest.

§ 890.1072 Further appeal rights after final decision to impose penalties and assessments.

If the debarring official's final decision imposes any penalties and assessments, the affected provider may appeal it to the appropriate United States district court under the provisions of 5 U.S.C. 8902a(h)(2).

§ 890.1073 Collecting penalties and assessments.

(a) *Agreed-upon payment schedule.* At the time OPM imposes penalties and assessments, or the amounts are settled or compromised, the provider shall be afforded the opportunity to arrange an agreed-upon payment schedule.

(b) *No agreement on payment schedule.* In the absence of an agreed-upon payment schedule, OPM shall collect penalties and assessments under its regular procedures for resolving debts owed to the Employees Health Benefits Fund.

(c) *Offsets.* As part of its debt collection efforts, OPM may request other Federal agencies to offset the penalties and assessments against amounts that the agencies may owe to the provider, including Federal income tax refunds.

(d) *Civil lawsuit.* If necessary to obtain payment of penalties and assessments, the United States may file a civil lawsuit as set forth in 5 U.S.C. 8902(i).

(e) *Crediting payments.* OPM shall deposit payments of penalties and assessments into the Employees Health Benefits Fund.

[FR Doc. 03–3125 Filed 2–7–03; 8:45 am]
BILLING CODE 6325–52–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 360

[Docket No. 02–067–1]

Noxious Weeds; Cultivars of Kikuyu Grass

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Advance notice of proposed rulemaking and request for comments.

SUMMARY: We are considering whether we should remove Whittet and AZ–1, two cultivars of kikuyu grass, from the list of noxious weeds. In order to make a scientifically sound decision, we are soliciting data regarding research or studies on cultivars of kikuyu grass. We are especially interested in data concerning potential invasiveness in the United States of cultivars of kikuyu grass.

DATES: We will consider all comments that we receive on or before April 11, 2003.

ADDRESSES: You may submit comments by postal mail/commercial delivery or electronically. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 02–067–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road, Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 02–067–1. If you wish to submit electronic comments, please visit the Internet Web site *http://comments.aphis.usda.gov* and follow the instructions there.

You may read any comments that we receive on this docket in our reading room, or online at *http://comments.aphis.usda.gov.* Electronic comments will be posted to this website immediately after receipt, and postal mail/commercial delivery comments will be scanned and posted to the website within a few days after receipt. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html.*

FOR FURTHER INFORMATION CONTACT: Mr. Michael A. Lidsky, Esq., Assistant Director, Regulatory Coordination, PPQ, APHIS, 4700 River Road Unit 141, Riverdale, MD 20737–1236; (301) 734–5762.

SUPPLEMENTARY INFORMATION:

Background

The noxious weed regulations were promulgated under the authority of the Federal Noxious Weed Act (FNWA) of 1974, as amended (7 U.S.C. 2801 *et seq.*), and are set out in 7 CFR part 360 (referred to below as the regulations). The Animal and Plant Health Inspection Service (APHIS) is authorized under the Plant Protection Act (the Act) to regulate the movement of noxious weeds into or through the United States or interstate in order to prevent the artificial spread of noxious weeds into noninfested areas of the United States (7 U.S.C. 7712). Under Executive Order 13112, Invasive Species (February 2, 1999), we are required, among other things, ''to prevent the introduction of invasive species * * * and to minimize the economic, ecological, and human health impacts. * * *'' The Executive Order defines ''invasive species'' as ''an alien species whose introduction does or is likely to cause economic or environmental harm or harm to human health.''

We list noxious weeds in § 360.200 of the regulations. In this section, weeds are divided into three categories: Aquatic weeds, parasitic weeds, and terrestrial weeds. In order for a weed to be listed, it must meet the definition contained in the Plant Protection Act for ''noxious weed.'' The Plant Protection Act defines a ''noxious weed'' as

''* * * any plant or plant product that can directly or indirectly injure or cause damage to crops (including nursery stock or plant products), livestock, poultry or other interests of agriculture, irrigation, navigation, the natural resources of the United States, the public health, or the environment.''

Kikuyu grass (*Pennisetum clandestinum*) has been listed as a noxious weed since 1983. As stated in our regulations at 7 CFR 360.200, footnote 1, each scientific name in our lists of noxious weeds is intended to include all plants within the genus or species represented by the scientific name. In other words, if the scientific name of a species is listed as a noxious weed, all cultivars are included in the listing. Under our regulations, kikuyu grass, like any other listed noxious weed, is subject to certain restrictions in order to prevent its artificial spread into noninfested areas of the United States. Listed noxious weeds are eligible to be moved into and through the United States, or interstate, only under a permit granted by APHIS. Persons who move noxious weeds under permit must follow all conditions contained in the permit with regard to storage, shipment, cultivation, and propagation. Kikuyu grass is not permitted to be moved interstate other than to Arizona, California, and Hawaii. Those States have agreed to accept shipments of kikuyu grass. California has listed kikuyu grass (*Pennisetum clandestinum*) as a noxious weed; Arizona and Hawaii have not.

We have received a recent request to remove two cultivars of kikuyu grass—Whittet and AZ–1—from the list of Federal noxious weeds. Based on all information available to us, we believe Whittet and AZ–1 are the only existing cultivars of kikuyu grass that are being moved interstate to Arizona, California, and Hawaii. As explained above, all cultivars of kikuyu grass are included in the list of Federal noxious weeds under the listing for *Pennisetum clandestinum* (kikuyu grass). The requesting individual is not requesting that we remove wild kikuyu grass from the list of Federal noxious weeds, only that we remove the kikuyu grass cultivars Whittet and AZ–1. The requesting individual maintains that our assessment of these cultivars is erroneous and that Whittet and AZ–1 do not qualify for inclusion on the noxious weed list.

Within the past several years, two scientific panels have reviewed pertinent scientific information regarding the invasiveness of Whittet. One independent panel of scientists representing the disciplines of genetics, ecology, weed science, ecosystems management, and cultivar development and evaluation considered all information published on Whittet as of the end of 1998. The panel documented one source published in early 1999. The other review was conducted by the Agricultural Research Service of the United States Department of Agriculture (USDA). The USDA panel considered all available information regarding Whittet, including the independent panel's report and information presented personally by the individual who is now requesting that we delist kikuyu grass cultivars Whittet and AZ–1. Both panels concluded that there is not enough scientific evidence to support removing Whittet from the list of noxious weeds.

Based on the findings of these panels, we continue to include all varieties and cultivars of kikuyu grass on the list of Federal noxious weeds. Both panels' reports and a list of other sources of information regarding kikuyu grass are available for review on the Internet at *http://comments.aphis.usda.gov.*

If we remove Whittet and AZ–1 from the list of noxious weeds, that would potentially remove all noxious weed-related interstate and import restrictions that now apply to these cultivars of kikuyu grass. Any change to the noxious weed status of Whittet and AZ–1 would not, however, affect the possible regulation of Whittet and AZ–1 under other applicable regulations contained in 7 CFR, chapter III.

We are soliciting comments on the request we have received to remove Whittet and AZ–1, cultivars of kikuyu grass, from the list of noxious weeds in § 360.200. We welcome any comments regarding this request, including those documenting personal experiences with Whittet and AZ–1. However, we need research data in order to make a scientifically-sound decision regarding delisting Whittet and AZ–1 as noxious weeds. We believe we are aware of all research on kikuyu grass cultivars published prior to and during 1998; therefore, unpublished research conducted prior to or during 1998 and published or unpublished research conducted after that year would be especially helpful. In particular, we are soliciting information on the following issues:

1. At this time, we are aware of the existence of kikuyu grass cultivars Whittet and AZ–1. Are there any other cultivars of kikuyu grass that we need to consider for delisting? If so, please identify these cultivars.

2. What is the invasive potential in the United States of Whittet and AZ–1? What is the invasive potential in the United States of other cultivars of kikuyu grass that should be considered for delisting? Would Whittet and AZ–1, and other cultivars of kikuyu grass, be considered ''invasive species'' within the meaning of Executive Order 13112? Please explain and provide specific data supporting your conclusions.

3. Were any unpublished research or studies conducted on Whittet or AZ–1 during or prior to 1998? Has any research on Whittet or AZ–1 been conducted, published or unpublished, since 1998? If so, please identify the research or studies and provide results, especially data concerning invasiveness and potential noxious weediness.

4. If Whittet and AZ–1 have invasive potential in the United States, can they be controlled? If so, specify the conditions and control techniques and to which cultivar they should be applied. Include detailed supporting data.

5. Are there natural mechanisms that would tend to render control procedures ineffectual for Whittet and AZ–1 and that might contribute to the spread of these cultivars outside of agricultural settings?

We urge all commenters to include all relevant data supporting their positions.

Authority: 7 U.S.C. 7711–7714, 7718, 7731, 7751, and 7754; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 4th day of February 2003.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 03–3181 Filed 2–7–03; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

7 CFR Part 1466

RIN 0587–AA31

Environmental Quality Incentives Program

AGENCIES: Natural Resources Conservation Service and Commodity Credit Corporation, Agriculture.

ACTION: Proposed rule with request for comments.

SUMMARY: This proposed rule implements the provisions of Title II of the Farm Security and Rural Investment Act of 2002 (the 2002 Act) relating to the Environmental Quality Incentives Program. The Natural Resources Conservation Service (NRCS) proposes to revise and update the rule for the Environmental Quality Incentives Program (EQIP). This proposed rule describes how the NRCS intends to implement EQIP as authorized by amendments in the 2002 Act.

DATES: Comments must be received by March 12, 2003.

ADDRESSES: Submit written comments to Mark W. Berkland, Director, Conservation Operations Division, U.S. Department of Agriculture (USDA), Natural Resources Conservation Service (NRCS), 1400 Independence Avenue SW., Room 5241, Washington, DC 20250–2890. This proposal may also be accessed, and comments submitted, via Internet. Users can access the NRCS homepage to submit comments to *FarmBillRules@usda.gov.* Persons with disabilities who require alternative means for communication (Braille, large print, audio tape, etc.) should contact the USDA TARGET Center at (202) 720–2600 (voice and TDD).

FOR FURTHER INFORMATION CONTACT: Mark W. Berkland, Director, Conservation Operations Division, USDA, 1400 Independence Avenue SW., Room 5241, Washington, DC 20250–2890. Phone: (202) 720–1845; e-mail: *mark.berkland@usda.gov.*

SUPPLEMENTARY INFORMATION:

Discussion of Program

The Farm Security and Rural Investment Act of 2002 (the 2002 Act) (Pub. L. 107–171, May 13, 2002) re-authorized and amended the Environmental Quality Incentives Program, which had been added to the Food Security Act of 1985 (the 1985 Act) (16 U.S.C. 3801 *et seq.*) by the Federal Agriculture Improvement and Reform Act of 1996 (the 1996 Act) (Pub. L. 104–127). The 2002 Act also amended the Environmental Conservation Acreage Reserve Program by changing the section name to the Comprehensive Conservation Enhancement Program and removing the authority for the Secretary of Agriculture to designate areas as conservation priority areas.

As provided by section 1241 of the 1985 Act (16 U.S.C. 3841), as amended by the 2002 Act, the funds, facilities, and authorities of the Commodity Credit Corporation (CCC) are available to NRCS for carrying out EQIP. (The Chief of the NRCS is a vice-president of the CCC.) Accordingly, where NRCS is mentioned in this rule, it also refers to the CCC's funds, facilities, and authorities where applicable.

Through EQIP, NRCS provides assistance to farmers and ranchers who face threats to soil, water, air, and related natural resources on their land. These include grazing lands, wetlands, private non-industrial forest land, and wildlife habitat. Participation in the program is voluntary. Under EQIP, NRCS will provide assistance in a manner that will promote agricultural production and environmental quality as compatible goals, optimize environmental benefits, and help farmers and ranchers meet Federal, State, and local environmental requirements. NRCS will offer the program throughout the Nation using the services of NRCS and technical service providers. NRCS will implement a consolidated and simplified process to reduce any administrative burdens that would otherwise be placed on producers.

In this rule, NRCS proposes to incorporate changes in the EQIP regulations, 7 CFR 1466, resulting from the passage of the 2002 Act. Several important changes were made in the 2002 Act that require changes to the regulation. These include:

(1) Changing the maximum payment limitation from $50,000 per person per contract to $450,000 per individual or entity for all contracts entered into in fiscal years 2002 through 2007;

(2) Revising the purpose from ''maximize environmental benefits per

dollar expended'' to ''optimize environmental benefits'';

(3) Eliminating the competitive bidding by applicants;

(4) Allowing payments to be made in the first year of the contract;

(5) Removing language authorizing targeting of funds to Conservation Priority Areas;

(6) Removing the provision prohibiting a producer from receiving cost-shares for an animal waste facility on an animal operation with more than 1,000 animal units;

(7) Allowing cost-share rates of up to 90 percent for limited resource farmers or ranchers and beginning farmers or ranchers;

(8) Reducing the minimum length of a contract from five years to one year after installation of the last practice;

(9) Increasing funding from $200 million per year to $400 million in FY 2002 and increasing to $1.3 billion per year in FY 2007; and,

(10) Imposing an average adjusted gross income (AGI) limitation.

In an effort to make the program more effective and efficient, the Department has initiated several streamlining changes, including:

(1) Eliminating the program's dual administration by changing Farm Service Agency (FSA) participation from concurrence to consultation;

(2) Reducing the planning requirements needed to develop the contract; and

(3) Allowing producers to have more than one contract per tract at any given time.

The fundamental philosophy of the program, assisting agricultural producers install conservation practices to provide environmental benefits, has not changed. The statutory and Departmental changes respond to limitations and restrictions identified by agency staff and participants. Agricultural producers who are interested in participating in the program will apply as they have in the past and should experience a quicker turn around on their application. Producers also have some expanded financial opportunities with higher contract limits and the ability to receive payments earlier in the contract period.

Optimizing Environmental Benefits

While the fundamental philosophy of the program has not changed, the revision to purpose of the program combined with removal of provisions related to Conservation Priority areas and the elimination of competitive bidding by applicants has required NRCS to propose an approach that will meet the new purpose of EQIP—the optimization of environmental benefits. NRCS is proposing to optimize environmental benefits through an approach that integrates consideration of National Priorities in four key program components: (1) The allocation of financial resources to States; (2) the allocation of financial resources within states; (3) the selection of conservation practices and the establishment of cost-share and incentive payment levels; and (4) the application ranking process.

With the advice of Federal agencies, NRCS will establish National Priorities that reflect our most pressing natural resource needs and emphasize off-site benefits to the environment. NRCS has identified the following National priorities:

- Reductions of nonpoint source pollutants; such as nutrients, sediment, or pesticides and excess salinity; in impaired watersheds consistent with Total Maximum Daily Loads (TMDL's) where available, as well as the reduction of groundwater contamination, and the conservation of ground and surface water resources;
- Reduction of emissions, such as particulate matter, NO_X, volatile organic compounds, and ozone precursors and depleters that contribute to air quality impairment violations of National Ambient Air Quality Standards;
- Reduction in soil erosion and sedimentation from unacceptably high rates on highly erodible land; and
- Promotion of at-risk species habitat recovery.

In establishing a National priority of at-risk species habitat recovery, NRCS recognizes unique local situations have the potential to add to Federally listed and candidate species. NRCS supports activities that will reduce the need for additional regulation but will monitor implementation of this aspect of the program to assure that primary focus is listed and candidate species.

NRCS has also identified National measures that can help EQIP achieve its National priorities and statutory requirements more efficiently. These proposed measures include identifying and implementing conservation practices that:

- Increase overall environmental benefits, for example by addressing multiple resource concerns, ensuring more durable environmental benefits and limiting adverse ancillary impacts;
- Encourage innovation;
- Support the statutory mandate to apply nationally 60 percent of available financial assistance to livestock-related conservation practices;
- Employ appropriate tools to more comprehensively serve EQIP purposes, such as Comprehensive Nutrient Management Plans and Integrated Pest Management Plans.

In the NRCS allocation of financial resources to states, NRCS is proposing that the National priorities and measures be used as guidance in determining the amount of funds received by states. NRCS is also proposing to retain a portion of EQIP funding to reward states that demonstrate a higher level of performance and address National priorities. Within states, NRCS is proposing that State Conservationists consider National priorities and measures as they allocate funds and determine priority resource concerns within their state. Similarly, NRCS is proposing that the State Conservationist, or the Designated Conservations, develop an application ranking that reflects both priority resource concerns within states and the National priorities and measures. Further detail about the specific changes in each of these key components is included in the Summary of Provisions.

While this proposal explicitly recognizes National priorities and measures, NRCS will continue to rely on ''locally led conservation'' as an important cornerstone of EQIP. Using a locally led process ensures consideration of the wide variability between and within states regarding resource issues, solutions, and limitations. Resource issues and concerns change as a result of shifts in population, climatic, or consumer habits; and Federal, state and local laws. Likewise, technical solutions evolve with the advent of new technology and the availability of new data on the effectiveness of practices. As a result, EQIP implementation may vary across jurisdictional boundaries. For example, some states may use state-level based program delivery while others will use county or parish based or regional (multi-county) based delivery.

Efficient and effective implementation of EQIP will be accomplished by building upon the existing NRCS delivery system that uses a line and staff organizational structure to provide both technical [1] and policy guidance from the

[1] Technical guidance is provided to all NRCS personnel using manuals, handbooks, bulletins, and memos. The primary technical tools are the soil surveys, the National Planning Procedures Handbook, the General Manual, and the Handbook of Conservation Practices. Based on this guidance from the National level, the State and District Conservationists, in coordination with universities, other federal agencies, conservation districts, and others, assemble the Field Office Technical Guide (FOTG) which is specific to each local NRCS office. The FOTG contains the primary scientific references tailored for NRCS at the local level. The FOTG contains identified natural resource concerns

National level to the local District Conservationist level. This delivery system will empower the state and local levels to adapt National Priorities and measures to site-specific conditions. State and local NRCS Conservationists will continue to supplement the EQIP Manual by specifying which practices qualify for EQIP payments and establishing maximum cost share rates, incentive payment levels, and the application ranking processes.

Ground and Surface Water Conservation

The 2002 Act also added a provision to EQIP which specifically addresses ground and surface water conservation with dedicated funding. Section 1240I of the 1985 Act provides the Secretary authority to promote ground and surface water conservation by providing cost-share payments, incentive payments, and loans to producers to carry out eligible water conservation activities including improvement to irrigation systems; enhancement of irrigation efficiencies; conversion to the production of less water-intensive agricultural commodities or dryland farming; improvement of the storage of water through measures such as water banking and ground water recharge; or mitigation of the effects of drought. NRCS seeks comments regarding how to administer a loan program in accordance with this section.

The Secretary may provide EQIP assistance for ground and surface water conservation to a producer only if the assistance will facilitate a conservation measure that results in a net savings in ground water or surface water resources in the agricultural operation of the producer. NRCS seeks comments regarding what criteria NRCS should use to determine what should constitute an agricultural operation. Should NRCS consider all the land operated by the producer, the contiguous parcel that includes the field where the practices are being implemented, or just the field in which the practices are being implemented?

Klamath Basin

Section 1204I(c)(2) of the 2002 Act dedicates an additional $50 million for ground and surface water conservation activities in the Klamath Basin located on the Californian/Oregon border. Pursuant to the 2002 Act, NRCS intends to use EQIP to implement this provision in accordance with the statutory requirements for ground and surface water conservation, such as improved irrigation systems, enhanced irrigation efficiencies, and improved water storage, with a goal of an overall "net savings" for agricultural operations. However, due to the complexity of resource issues in the Klamath Basin, a reduction of water usage may not always be the only appropriate solution available. Improving the quality of Klamath Basin water resources makes more "usable" water available, thus resulting in a net savings related to agricultural uses. Water conservation activities in the basin can therefore include water quality improvements as well as a reduction in water usage by agricultural operations.

The two Klamath Basin State Conservationists will lead a basin planning effort to identify water conservation activities to address the basin's resource issues. This plan may require additional funding from sources other than the $50 million in EQIP funding identified for the basin. NRCS seeks comments regarding how the Klamath Basin water conservation provisions should be implemented.

Credit Trading

NRCS recognizes that long-term environmental benefits can also be achieved utilizing innovative alternative approaches to provide incentives for a producer to implement conservation practices. One example is the use of trading mechanisms for water quality credits, under which a producer could sell credits derived from the implementation of conservation practices to other dischargers, who would use these credits for regulatory compliance. In order to assure net reductions in pollutant discharges, credits would need to be derived from conservation practices that go beyond any existing responsibilities of the producer. Pilot trading programs have already demonstrated substantial environmental progress at reduce cost.

NRCS would like to support the institutionalization of water quality credit trading. Accordingly, NRCS is considering the possibility of waiving any and all interests in credits the producers generate using EQIP funds. While producers would be normally be compensated for the costs incurred in generating credits through their sale in private markets, NRCS recognizes that in the absence of established markets, there is considerable uncertainty for producers, particularly if they wish to implement conservation practices before a buyer has been identified. For this reason, NRCS believes it may be appropriate to support development of trading program, for a limited time until functioning markets are established, by allowing producers to generate credits using EQIP funds that could potentially be sold in a trading market. At the same time, NRCS recognizes that there may be concern about allowing credits generated with taxpayer money to be sold for private gain. Any such waiver would likely have limitations; for example restricted to only those credits associated with the EQIP program and only for the duration of the 2002 Farm Bill, FY 2002 through FY2007. NRCS might also try such a waiver program on a pilot basis, to determine if it was effective in helping to establish self sustaining credit markets. NRCS seeks comments on adopting a limited waiver program, as well as on innovative mechanisms more generally that NRCS could consider to institutionalize alternatives for encouraging conservation implementation.

Summary of Provisions

The rule is organized into three subparts: Subpart A—General Provisions; Subpart B—Contracts; and, Subpart C—General Administration. The basic structure of the rule has not changed. However, NRCS is proposing to eliminate, add, or change several sections in Subparts A and B to make the rule consistent with the requirements of the 2002 Act and Departmental streamlining, to explicitly incorporate National priorities and measures, and to increase the overall transparency of the program. We provide a summary of each section below for Subparts A and B and identify proposed changes. We do not provide a detailed summary of Subpart C. This subpart describes administrative aspects of EQIP including appeal rights and exceptions thereto, the responsibilities of the participant to obtaining necessary easements and complying with other laws and regulations and provide USDA representatives with access to land, and provisions for relief if a participant relies on advice or action of a NRCS representative. Only minor changes were made in this subpart to reflect the determination that NRCS will administer EQIP.

Subpart A—General Provisions

Section 1466.1 sets forth the purpose, scope, and objectives of EQIP. The use of EQIP for educational assistance is removed from this section to reflect section 1240(B) of the 1985 Act, as amended by the 2002 Act. Air has also been added to the list of natural

at each location, local reference data about soil, watersheds, air, and plant and animal resources, locally approved conservation practices including interim practices, the cost of implementing conservation practices, local and state laws and regulations, etc. Information about FOTGs can be found at *http://www.nrcs.usda.gov/technical/efotg/*.

resource concerns addressed by this program.

Section 1466.2 describes the roles of NRCS, FSA, other agencies, the State Technical Committees, and Local Work Groups. This section has been changed to reflect the Department's streamlining initiative. Specifically, with the delegation of EQIP to NRCS, § 1466.2(a)–(d) of the current rule, which described FSA's roles and responsibilities, has been eliminated. In § 1466.2(b), NRCS and FSA will consult at the national level on program and policy decisions and FSA may continue to have an advisory capacity in the administration of EQIP by participating on the State Technical Committees and Local Work Groups.

NRCS is clarifying the roles and responsibilities of State Technical Committees and Local Work Groups in § 1466.2 (c). While EQIP is administered by NRCS and all program decisions are made by NRCS, some decisions, such as determination of eligible practices and cost-shares rates and development of the ranking process, may be delegated to the State Conservationist. The State Conservationist will use advice of the State Technical Committee to make these decisions. The State Conservationist can, in turn, make a final decision or delegate the authority to a Designated Conservationist at the regional or local level. The Designated Conservationist will use advice from a Local Work Group to make decisions delegated to their level. Additional information regarding NRCS policy for State Technical Committees and Local Work Groups can be found at *http://policy.nrcs.usda.gov/scripts/lpsiis.dll/M/M_440_501.htm.*

Section 1466.3 sets forth definitions for terms used throughout the part. Several new definitions, including comprehensive nutrient management plan, limited resource farmer or rancher, beginning farmer or rancher, priority natural resource concerns, National priorities, National measures, Conservation Innovation Grants, EQIP plan of operations, and technical service providers are proposed to address statutory changes and administrative changes resulting from the Department's streamlining initiative. Other terms, such as agricultural operation, conservation district, and wildlife have been proposed to provide greater clarity. Because the administration of EQIP has been delegated to NRCS, definitions related to FSA, such as Administrator and Farm Service County Committee have been removed from this section. We are also proposing to eliminate definitions for Conservation Management System, Conservation Plan, Livestock related Natural Resource Concerns, National Conservation Priority Area, Priority Area, and Private Agribusiness Sector, Resource management system, unit of concern, and vegetative practice because these terms are no longer used in the proposed regulatory language.

A definition for the comprehensive nutrient management plan (CNMP) is included because it is specifically authorized by the 2002 Act. The definition is included to provide the technical base and is the same that NRCS uses in its Comprehensive Nutrient Management Planning Technical Guidance which is part of the NRCS National Planning Procedure Handbook.

Section 1240B of the 1985 Act, as amended by the 2002 Act, gives the Secretary the authority to increase the cost-share rate up to 90 percent for Limited Resource Farmers and Ranchers and beginning farmers or ranchers. NRCS proposes to use two criteria to define a limited resource producer or rancher. Specifically, a Limited Resource Producer or Rancher is a person with direct or indirect gross farm sales not more than $100,000 (to be increased starting in FY 2004 to adjust for inflation) and a total household income at or below the national poverty level for a family of four, or less than 50 percent of county median household income (to be determined annually), in each of the previous two years.

NRCS will use a definition for Beginning Farmer or Rancher that is consistent with the USDA definition of that term under section 343(a) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1991(a)) as found at 7 CFR 1941.4. NRCS is proposing to define a Beginning Farmer or Rancher as an individual or entity who has not operated a farm or ranch, or who has operated a farm or ranch for not more than 10 years and will materially and substantially participate in the operation of the farm or ranch. In the case of a contract with an individual, individually or with the immediate family, material and substantial participation requires that the individual provide substantial day-to-day labor and management of the farm or ranch, consistent with the practices in the county or State where the farm is located. In the case of a contract made with an entity, all members must materially and substantially participate in the operation of the farm or ranch. Material and substantial participation requires that the members provide some amount of the management, or labor and management necessary for day-to-day activities, such that if the members did not provide these inputs, operation of the farm or ranch would be seriously impaired. For an entity to be defined as a Beginning Farmer or Rancher, all members of the entity must qualify. This regulation interprets the maximum length of farming experience allowable for Beginning Farmer or Rancher to be 10 consecutive years.

In order to assure consistency of program implementation, new definitions have been included for National priorities, National measures and priority natural resource concerns.

A definition of Conservation Innovative Grants is defined in this section because it is specifically authorized by the 2002 Act. This definition is included to provide guidance as to what these grants will be used for.

The 2002 Act authorizes NRCS to use certified Technical Service Providers for providing technical assistance, a definition of who qualifies as a TSP is included. A definition of the EQIP plan of operations is included to clarify to producers what is required to be eligible for EQIP assistance. A discussion of the EQIP plan of operations is included in § 1466.9.

Section 1466.4 is a new section that lists and describes how National priorities will be used to implement EQIP. Regulatory language related to Program Requirements found in § 1466.4 of the current EQIP rule has been moved to § 1466.7 in this proposal.

NRCS has established National priorities and measures to guide the allocation of EQIP funds and assist in the prioritization of EQIP applications. The National priorities are listed in § 1466.4(a) and § 1466.4(b) describes how NRCS will use the National priorities to implement the program at the state and local level. The Chief intends to review these National priorities and measures annually, utilizing input from the public and affected stakeholders and Federal agencies, and make revision as required to address emerging resource issues. Information and updates about the National priorities and measures will be provided to the State Conservationists through revisions to the EQIP manual.

Section 1466.5 is a new section that describes program management including National funding allocation. In § 1466.5 of the current rule priority areas and significant statewide natural resource concerns have been deleted from the regulatory language of this proposal.

This section describes the first key component in ''optimizing environmental benefits'', the allocation of EQIP funds from the Chief to the State Conservationists. It also includes provisions for program management such as an incentive awards holdback, progress monitoring, periodic evaluation of program delivery and public disclosure of program results.

NRCS is proposing that the Chief of NRCS, with advice of other Federal agencies and in consultation with FSA, will make National funding allocation decisions that reflect the most pressing national resource needs.

Specifically, NRCS will determine the allocation of EQIP funds to NRCS State Conservationists based on National priorities and measures. NRCS will also include other considerations in their allocation decision, such as:

• The significance of the environmental and natural resource concern and the opportunity for environmental enhancement;

• The conservation needs of farmers and ranchers in complying with the highly erodible land and wetland conservation provisions of 7 CFR part 12;

• The ways the program can best assist producers in complying with Federal, State, local, and Tribal environmental laws, quantified where possible;

• The amount of agricultural land in different land use categories, such as grazing land, specialty crops, and others; and

• Other relevant information to meet the purposes of the program.

NRCS will evaluate the existing allocation formula and will consider additional factors to address air quality concerns such as air quality non-attainment areas and acres of cropland with excessive wind erosion. When updating the national allocation formula, NRCS intends to solicit input from an interagency Task Force of Federal agencies, which have knowledge and expertise in the areas of soil, water, air, wildlife and other related natural resources. NRCS seeks comments regarding what process should be used and factors should be considered when evaluating the National funding allocation formula.

NRCS is also proposing to retain a portion of the initial EQIP funding each fiscal year to reward states that demonstrate a higher level of performance in the implementation of EQIP and in addressing the National priorities in the previous year. When allocating the incentive holdback funds to those states demonstrating higher levels of performance, the Chief of NRCS will analyze the management decisions of the State Conservationist and State EQIP implementation performance considering factors such as:

• The degree to which states strategically prioritize and address priority resource concerns, such as through statewide conservation plans, fund allocation, and application ranking;

• The use of contracts with long lived practices;

• The use of contracts with cost-effective practices;

• The use of contracts that benefit multiple resources;

• The efficiency and cost-effectiveness of program delivery;

• The degree to which program implementation addresses National priorities;

• The extent to which Technical Service Providers are engaged to help deliver the program;

• The degree to which Limited Resource Producers are participating; and

• The degree to which states encourage innovation and the leveraging of EQIP funds.

NRCS is formulating the incentive award process and anticipates that the financial bonus will be distributed to a limited number of states assuring that the concept of a bonus is maintained. NRCS is soliciting comments regarding what approaches NRCS can use to efficiently and effectively implement this award incentive.

NRCS will set aside a portion of the available EQIP funding for purposes of complying with the ‘‘regional equity’’ provision of section 1241(c) of the 1985 Act as amended by section 2701 of the 2002 Act. The ‘‘regional equity’’ provision requires the Secretary to give, before April 1, a priority for certain conservation program funding to applications in states that have not received an aggregate of $12 million from those programs.

In order to manage EQIP in a manner that continues to optimize environmental benefits, NRCS will undertake periodic reviews of the effects of program delivery at the state and local level. State Conservationists will prepare annual reports explaining how EQIP was implemented within the state and the accomplishments that were achieved and the Chief will assure that information regarding EQIP implementation will be made available to the public using technology such as the Internet on the NRCS World Wide Web site at *http://www.nrcs.usda.gov/EQIP/*. NRCS seeks comments on how best to evaluate the performance of the EQIP program. For example, how should environmental changes be measured, and what methodologies would best identify environmental effects due to contract activities? What kind of output measures and data collection strategies should NRCS consider? What approaches could NRCS use to evaluate cost-effectiveness?

Section 1466.6 is a new section that describes the responsibilities of State Conservationists in the allocation of funds and implementation of the EQIP program. Much of the language found in § 1466.6 of the current rule, Conservation plan, has been used in § 1466.9 of the proposed rule, EQIP Plan of Operations.

The allocation of funds within States is the second key component in ‘‘optimizing environmental benefits.’’ NRCS proposes that the State Conservationists will be responsible for identifying State priority natural resource concerns that incorporate National priorities and measures, for identifying which of the available conservation practices should be encouraged with recommended funding levels, for establishing local level EQIP performance goals and treatment objectives, and for monitoring program performance of the NRCS field offices to ensure that National priorities and measures are being achieved. As part of this process, the State Conservationist will consider the advice of the State Technical Committee and National guidance, in the form of notices and manuals, state priorities and state based resource inventories.

NRCS also proposes that the State Conservationist may delegate implementation of EQIP to Designated Conservationists. Designated Conservationists will use the advice of Local Work Groups to implement EQIP within their area. This delegation by the State Conservationist allows for greater management flexibility at the State level and, perhaps more importantly, explicitly provides for locally led conservation. The State Conservationist will also provide specific guidance to the offices reviewing and ranking applications regarding what factors should be considered in the ranking process. The State Conservationists will provide periodic reports to the public and the Chief regarding implementation of EQIP.

NRCS is also proposing to require that State Conservationists use the following in decisions related to the management of the program and the allocation of funds:

• The nature and extent of natural resource concerns at the state and local level;

• The availability of existing programs to assist with the activities related to the priority natural resource concerns;

• The existence of multi-county and/or multi-state collaborative efforts to address natural resource concerns;

• Ways and means to measure performance and success; and

• The degree of difficulty that producers face in complying with environmental laws.

As part of these considerations, NRCS expects that State Conservationists will quantify, when and where possible the goals, objectives, and solutions for natural resource concerns in order to optimize environmental benefits that would be delivered by Federal dollars. NRCS also expects that State Conservationists will use science-based background data, quantified when and where possible, on the environmental status and needs, soils information, demographic information, and other available technical data that illustrate the nature and extent of natural resource concerns.

Section 1466.7 is a new section that describes how NRCS will establish special program outreach activities at the National, State, and local levels in order to ensure that producers whose land has environmental problems know that they are eligible to apply for program assistance. NRCS will target its outreach efforts to limited resource farmers, Tribes, beginning farmers and ranchers, and others with historically low participation rates in the programs of NRCS, NRCS, and other USDA agencies. NRCS is exploring new possibilities to increase its outreach to these communities and Tribes.

Section 1466.7 of the current EQIP rule, Conservation Practices, has been moved to Section 1466.10 of the proposed rule.

Section 1466.8 sets forth program requirements such as land and applicant eligibility and the amount of EQIP financial assistance to be used for livestock practices. With the following exceptions, NRCS is retaining the language of Section 1466.4 in the current EQIP rule:

• Section 1466.4(b) of the current rule has been removed. Much of this language appears in proposed Section 1466.5;

• Section 1466.4(d)(iii) has been eliminated;

• Proposed Section 1466.8(b)(3) adds submission of an acceptable EQIP plan of operations as an eligibility requirement; and

• Proposed Section 1466.8(d) increases the amount directed to be used for livestock practices from 50 to 60 percent, pursuant to section 1240B(g) of the 1985 Act, as amended by the 2002 Act.

Section 1466.9 describes the requirements of the EQIP plan of operations which is the basis of EQIP contracts. Producers will be required to develop and apply an EQIP plan that addresses identified priority natural resource concerns. The producer develops the plan of operations with the assistance of NRCS or other public or private technical service providers. With the following notable exceptions, NRCS is retaining the language of Section 1466.6 in the current EQIP rule:

• Section 1466.6(a) in the current rule has been deleted. It contained requirements for maximizing environmental benefits per dollar.

• Section 1466.6(b) and (c) have been removed from this section. Proposed Section 1466.11 addresses technical assistance.

• Section 1466.6(e)(1), (2), have been deleted. This information is contained in the producer's conservation plan and would be a duplication of effort.

• Section 1466.6(f) has been deleted. The single plan that was referenced is available to producers through the NRCS Conservation Operations program and is not required as a part of an EQIP contract.

• Proposed Section 1466.9(c) requires that an EQIP plan of operations include an animal waste storage or treatment facility to include a comprehensive management nutrient plan. Section 1240E(a)(3) of the 1985 Act, as amended by the 2002 Act, requires, in the case of a confined livestock feeding operation for the producer to submit an EQIP plan of operations that provides for the development and implementation of a comprehensive nutrient management plan.

• Proposed Section 1466.9(e) allows participant to receive assistance to implement an EQIP plan of operations for water conservation with funds authorizes by section 1240I of the 1985 Act only if the assistance will facilitate a net savings in ground or surface water resources in the agricultural operation of the producer.

Section 1466.10 describes how eligible practices will be determined by NRCS. NRCS State Conservationists will determine which conservation practices will be eligible and the maximum payment levels in the State. The State Conservationist may also request that the Designated Conservationist determine which conservation practices will be eligible in localities within the limits established by the State Conservationist.

The proposed language in Section 1466.10 does not include any of the language related to confined livestock operations found in Section 1466.7(b) of the current EQIP rule. The 2002 Act removed the restriction that a producer who owns or operates a large confined livestock operation cannot be eligible for cost-share payments through EQIP to construct an animal waste management facility. Financial assistance is available to all livestock producers regardless of size.

NRCS is also proposing to add paragraph (f) to Section 1466.10. It would permit NRCS to approve interim conservation practice standards and financial assistance for pilot testing new technologies or innovations. NRCS will involve other entities, including extension and research agencies and institutions, conservation districts, universities, private industry, and others, in pilot testing to evaluate and assess the practices. This portion of the regulation remains unchanged.

Section 1466.11 is a new section that addresses the sources of technical assistance to carry out EQIP. NRCS will provide technical assistance and will encourage producers to use the services of certified personnel of cooperating Federal, State, or local agencies, or private entities who can provide technical assistance. As determined by the State Conservationist, NRCS may contract with private enterprises or enter cooperative agreements with other Federal, State, or local entities for services related to EQIP implementation. NRCS retains the responsibility for ensuring that technical program standards are met. This section of the regulation remains unchanged, as proposed, but may be modified in the final rule to conform with the final rule for Technical Service Provider Assistance, 7 CFR 652 (*see* 72 FR 70119, Nov. 21, 2002).

Subpart B—Contracts

Section 1466.20 addresses applications for contracts and selection of offers from producers. The revisions to this section are pursuant to both statutory changes regarding section 1240C, which provides that contract selection will give higher priorities to applications that encourage cost-effective conservation and address National priorities, and USDA's streamlining initiative. The evaluation of applications using a ranking process is the fourth contributing factor to ''optimizing environmental benefits''.

NRCS will accept applications for EQIP throughout the year, but will rank the applications and select the participants periodically as determined at the local and/or State level. NRCS will announce, in advance, the date on which NRCS will begin evaluating and ranking applications.

Before evaluating individual applications, the State Conservationist or designee, with advice from the State Technical Committee, and Local Work Groups, will develop ranking criteria to prioritize producer applications. The ranking process will evaluate applications according to the magnitude of the environmental benefits resulting from the treatment of the priority natural resource concerns. The ranking will determine which applications will be awarded contracts. The ranking process will be designed to award higher scores for offers from producers that address National and State priorities in conjunction with local resource concerns. The ranking process will score the producer's offer of conservation practices according to the following criteria as well as other locally defined pertinent factors:

- Use of cost-effective conservation practices;
- Treatment of Multiple Resource Concerns;
- Use of conservation practices that provide environmental enhancements for a longer periods of time; and
- Compliance with Federal, state, or local regulatory requirements concerning soil, water, and air quality; wildlife habitat; and ground and surface water conservation.

NRCS proposes that state and local lists of eligible practices, cost-share rates and incentive payment levels, and the ranking process will be posted on the NRCS EQIP website before final ranking of applications. NRCS will also make the appropriate ranking process or processes available at each local NRCS office.

NRCS is proposing to delete the ranking and selection criteria currently in § 1466.20(f)(1) and (g). The first criterion refers to consideration of the environmental benefits per dollar. As this purpose has been eliminated from the authorizing statute, this criterion is no longer necessary. Consistent with 2002 Act, NRCS is proposing that cost considerations alone will not be the only factor when comparing two applications that are expected to provide similar environmental benefits.

NRCS will give additional consideration to contracts that will help the producers comply and exceed requirements of environmental laws, such as EPA's Concentrated Animal Feeding Operations (CAFO) regulatory requirements, the Clean Water Act and Endangered Species Act.

In development of the ranking process, NRCS will recognize that EQIP can play an important role in assisting producers with conservation, restoration, and enhancement of fish and wildlife habitat on working lands. By identifying sound habitat practices targeted at priority species that are at risk from long term declines, EQIP can help producers aid those species while avoiding complications arising out of listings. Many at risk species are benefited by existing soil and water conservation practices. With minor additional effort they can be aided by additional practices that will benefit all resources simultaneously in a manner compatible with working operations. NRCS, state technical committees and local working groups will continue to collaborate with United States Fish and Wildlife Service, National Marine Fisheries Service, and state fish and wildlife agencies to capitalize on opportunities to proactively address at risk fish and wildlife species in conjunction with other resource concerns.

NRCS is also proposing that the approving authority for EQIP contracts will be the State Conservationist or designee except that:

(1) The approving authority for any contract that contains a structural practice with a cost-share rate exceeding 50 percent is the State Conservationist, and

(2) The approving authority of all contracts with payments greater than $100,000 is the NRCS Regional Conservationist.

Section 1466.21 addresses the requirements for EQIP contracts. Only land that meets the purpose and goals of the program and is to be treated under EQIP will be included in the contract. NRCS is including the following changes to the current EQIP language:

- In Section 1466.21(a) that both cost share payments and incentive payments may be included in the EQIP contract.
- Pursuant to section 1240B(b)(2) of the 1985 Act, as amended by the 2002 Act, Section 1466.21(b) the minimum contract length is revised from five years to one year after installation of the last practice. This part was also revised to allow more than one contract on a tract as a result of the Department's streamlining efforts.
- In Section 1466.21(b) NRCS proposes in paragraph (3)(iv) to require the implementation of a comprehensive nutrient management plan when the EQIP contract includes a waste storage or waste treatment facility.

Section 1466.22 addresses the participant's responsibility for conservation practice operation and maintenance. This part remains unchanged.

Section 1466.23 addresses cost-share rates, incentive payment levels, grants, and payment eligibility and limitations. In conjunction with Section 1466.10, this is the third key component in "optimizing environmental benefits."

Subject to the National direct funding caps, State Conservationists with advice of Local Work Groups and the State Technical Committee can set cost-share rates and incentive payment limits as determined appropriate to encourage a producer to perform the land management practice that would not otherwise be initiated without such assistance.

The number and type of eligible practices and the cost-share rates and incentive payment levels determined by the State Conservationist or designee influence the extent to which the program will optimize environmental benefits and what resource concerns will be addressed. The State Conservationist or designee, with advice from State Technical Committees and Local Work Groups will determine which conservation practices are eligible for EQIP funding in each state. The State Conservationist or designee will consider the level of environmental benefits of the eligible conservation practices and will use that information to determine cost-share rates and incentive payment levels. In general, cost share rates will be determined for structural practices, while incentive payments will be determined for land management practices. No incentive payments will be made available for land management practices that are currently generally accepted and practiced in the agricultural community. The State Conservationist or designee will set cost share rates and incentive payments that reflect:

(1) The cost effectiveness of conservation practices;

(2) The number of resource concerns a practice will address (*e.g.* a waste treatment facility that reduces ammonia emissions benefiting both air and water quality should have a higher cost-share rate than a waste storage lagoon.);

(3) The degree of treatment of priority natural resource concerns;

(4) The longevity of the beneficial environmental effect derived from the practice; and

(5) The energy savings demonstrated by the practice.

NRCS intends to fund most structural practices at no more than 50 percent cost-share. NRCS will make payments to the producer when NRCS determines that the conservation practices specified in the contract are satisfactorily established. NRCS intends to monitor and evaluate the program to ensure that financial assistance is used in an appropriate manner to optimize the environmental benefits.

The EQIP contract specifies the cost-share or incentive payments the producer will receive from NRCS in return for applying the needed conservation practices and land-use adjustments according to a specified schedule. NRCS, with the advice of the State Technical Committee and/or Local Work Group and subject to funding caps, will determine the appropriate cost-share rates for structural practices and incentive payments for land management practices. In determining the amount and rate of incentive payments the State Conservationist should accord a greater significance to practices that address priority natural resource concerns.

NRCS, with the advice of the State Technical Committee or Local Work Groups, will also determine the appropriate incentive payments for development of a comprehensive nutrient management plan (CNMP). NRCS seeks comments regarding how incentive payments to develop a CNMP should be implemented.

The National direct funding cap for structural practices is 75 percent of the actual cost or 90 percent for limited resource producer and beginning farmer (Section 1240B(d)(2) of the 1985 Act as amended by the 2002 Act).

Section 1466.24 is concerned with payment eligibility and payment limitations. Pursuant to section 1240G of the 1985 Act, as amended by the 2002 Act, this part is revised to increase the contract total from $50,000 per person to a total of $450,000 maximum per individual or entity for all FY 2002–FY 2007 contracts and deletes the $10,000 per year limitation. It is also revised pursuant to section 1001D of the 1985 Act, as amended by Section 1604 of the 2002 Act, to limit payment eligibility for participants who have an average adjusted gross income of more than $2.5 million for the previous three years as determined under 7 CFR part 1400, subpart G.

(1) Payment Eligibility

For the definition of ''individual'' and ''entity'', NRCS proposes to continue to use the provisions in 7 CFR Part 1400 related to the definition of ''person'' and the limitation of payments will be used, except that:

(a) States, political subdivisions, and entities thereof will not be persons eligible for financial assistance.

(b) Payments in excess of the limitation may be made to a Tribal venture if an official of the Bureau of Indian Affairs or a Tribal official certifies that no one Tribal member will receive, directly or indirectly, more than the limitation. Annually, the certifying official must provide to NRCS a list of members, by Social Security Number, and the benefit each member has received.

Further, the following provisions in 7 CFR 1400 will not be used because they are not consistent with the intent and language of the EQIP statute: Subpart C for determining whether persons are actively engaged in farming, Subpart E for limiting payments to certain cash rent tenants, and Subpart F for determining whether foreign persons are eligible for payment.

(2) Individual Payment Limitation

Section 1240G of the 1985 Act, as amended by the 2002 Act, establishes a $450,000 EQIP payment limit to any individual or entity for all FY2002 through FY2007 contracts they enter either as an individual or as a beneficiary of an entity. In order to ensure that no individual will receive more than the $450,000, NRCS will track all EQIP funds paid to any and all individuals by the social security number. In order to be eligible to participate in EQIP, the application of an individual, entity (*e.g.*, corporation, limited liability partnership, irrevocable trust, or any other organization listed as an entity in FSA's rule 7 CFR 1400), or any other application in which there is more than one individual listed as a beneficiary must provide a list of all members or beneficiaries, their social security numbers and the percentage interest of each member or beneficiary.

(3) Adjusted Gross Income Eligibility

Section 1001D of the 1985 Act, as amended by section 1604 of the 2002 Act, provides that an individual or entity shall not be eligible to receive payments from several programs, including EQIP, during a crop year if the average adjusted gross income of the individual or entity exceeds $2,500,000, unless not less than 75 percent of the average adjusted gross income of the individual or entity is derived from farming, ranching, or forestry operations. This provision of the 1985 Act will be implemented in accordance with 7 CFR 1400, Subpart G—average adjusted gross income limitation. However, since NRCS will be making a commitment for payments under an EQIP contract for a period of time into the future, NRCS will make a one-time eligibility determination in accordance with Subpart G, 7 CFR 1400 at the time of contract approval.

Section 1466.25 addresses contract modifications and transfers of land. This section is revised to remove a requirement that Conservation District will approve modifications to both the EQIP plan of operations and EQIP contract to assure there will be no conflict of interest where the Conservation District is also a Technical Service Provider.

Section 1466.26 addresses the procedures to be followed for contract violations and terminations. Changes reflect the determination that NRCS will administer EQIP.

Section 1466.27 is reserved for future regulations that address implementation of Conservation Innovation Grants.

Section 1240H of the 1985 Act, as added by the 2002 Act, gives the Secretary the authority to use EQIP funds to pay up to 50 percent of the cost of competitive grants that are intended to stimulate innovative approaches to leveraging Federal investment in environmental enhancement and protection, in conjunction with agricultural production. USDA will issue a future public notice to solicit comments on how the Conservation Innovation Grants provision should be implemented.

Regulatory Certifications

Executive Order 12866

Pursuant to Executive Order 12866 (58 FR 51735, October 4, 1993), it has been determined that this proposed rule is an economically significant regulatory action because it may result in an annual effect on the economy of $100 million or more. The administrative record is available for public inspection in Room 5241 South Building, USDA, 14th and Independence Avenue SW., Washington, DC. Pursuant to Executive Order 12866, NRCS conducted an economic analysis of the potential impacts associated with this program, and included the analysis as part of a Regulatory Impact Analysis document prepared for this rule. A summary of the Economic Analysis can be found at the end of this preamble and a copy of the analysis is available upon request from Mark W. Berkland, Conservation Operations Division, Natural Resources Conservation Service, Room 5241, Washington, DC 20250–2890 or electronically at *http://www.nrcs.usda.gov/programs/eqip/index.html* under ''Additional Information''.

Regulatory Flexibility Act

The Regulatory Flexibility Act is not applicable to this rule because NRCS is not required by 5 U.S.C. 533 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

Environmental Analysis

A draft Environmental Assessment (EA) has been prepared to assist in determining whether this proposed rule, if implemented, would have a significant impact on the quality of the human environment. Based on the results of the draft EA, NRCS proposes issuing a finding of no significant impact (FONSI) before a final rule is published. Copies of the draft EA and draft FONSI may be obtained from Mark W. Berkland, Conservation Operations Division, Conservation Operations Division, Natural Resources Conservation Service, Room 5241–S, Washington, DC 20250–2890 and electronically at *http://www.nrcs.usda.gov/programs/ eqip/index.html* under ''Additional Information''. Mail comments on the draft EA and draft FONSI by March 12, 2003, to Mark W. Berkland, Conservation Operations Division, Natural Resources Conservation Service, Room 5241, Washington, DC 20250–2890, or submit them via the Internet to *farmbillrules@usda.gov.*

Civil Rights Impact Analysis

NRCS has determined through a Civil Rights Impact Analysis that the issuance of this proposed rule will not have a significant effect on minorities, women and persons with disabilities. Copies of the Civil Rights Impact Analysis and Finding of No Significant Impact may be obtained from Mark W. Berkland, Conservation Operations Division, Natural Resources Conservation Service, PO Box 2890, Washington, DC 20013–2890, and electronically at *http://www.nrcs.usda.gov/programs/ eqip/index.html* under ''Additional Information'.

Paperwork Reduction Act

Section 2702(b)(1)(A) of the 2002 Act provides that the promulgation of regulations and the administration of Title II of the Act shall be made without regard to chapter 35 of Title 44 of the United State Code, the Paperwork Reduction Act. Accordingly, these regulations and the forms, and other information collection activities needed to administer the program authorized by these regulations, are not subject to provisions of the Paperwork Reduction Act, including review by the Office of Management and Budget.

NRCS is committed to compliance with the Government Paperwork Elimination Act (GPEA) and with the Freedom to E-File Act, which require Government agencies in general and NRCS in particular to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. The forms and other information collection activities required for participation in the program proposed under this rule are not yet fully developed for the public to conduct business with NRCS electronically. However, the application form will be available electronically through the USDA eForms Web site at *http://www.sc.egov.usda.gov* for downloading. Applications may be submitted at the local USDA service centers, by mail or by FAX. Currently, electronic submission is not available because signatures from multiple producers with shares in agricultural operations are required.

Executive Order 12988

This proposed rule has been reviewed in accordance with Executive Order 12988, Civil Justice Reform. The provisions of this proposed rule are not retroactive. The provisions of this proposed rule preempt State and local laws to the extent such laws are inconsistent with this proposed rule. Before an action may be brought in a Federal court of competent jurisdiction, the administrative appeal rights afforded persons at 7 CFR parts 614, 780, and 11 must be exhausted.

Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994

Pursuant to section 304 of the Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994 (Pub. L. 103–354), USDA classified this proposed rule as major and NRCS conducted a risk analysis. The risk analysis establishes that the EQIP proposed rule will produce benefits and reduce risks to human health, human safety, and the environment in a cost-effective manner. A copy of the risk analysis is available upon request from Mark W. Berkland, Conservation Operations Division, Natural Resources Conservation Service, PO Box 2890, Washington, DC 20013–2890, and electronically at *http://www.nrcs.usda.gov/programs/eqip/index.html* under ''Additional Information'.

Unfunded Mandates Reform Act of 1995

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), NRCS assessed the effects of this rulemaking action on State, local, and Tribal government, and the public. This action does not compel the expenditure of $100 million or more by any State, local, or Tribal governments, or anyone in the private sector; therefore, a statement under section 202 of the Unfunded Mandates Reform Act of 1995 is not required.

Economic Analysis—Executive Summary

Background

Pursuant to Executive Order 12866, Regulatory Planning and Review, the Natural Resources Conservation Service has conducted a benefit cost analysis of the Environmental Quality Incentives Program as formulated for the proposed rule. The Department of Agriculture Reorganization Act of 1994 and the Unfunded Mandates Reform Act of 1995 also require analysis of costs, benefits and risks associated with major regulation. These requirements provide decision makers with the opportunity to develop and implement a program that is beneficial, cost effective and that minimize negative impacts to health, human safety and the environment.

The analysis estimates EQIP will have a beneficial impact on the adoption of conservation practices and, when installed or applied to technical standards, will increase net farm income. In addition, benefits would accrue to society for long-term productivity maintenance of the resource base, reductions in non-point source pollution damage, and wildlife enhancements. As a voluntary program, EQIP will not impose any obligation or burden upon agricultural producers that choose not to participate. The program was authorized at $6.16 billion over the six-year period of FY 2002 through FY 2007, with annual amounts for the base program and the ground and surface water conservation provisions increasing to $1.36 billion in FY 2007 after the initial authorization in FY 2002 year of $425 million. In addition, the 2002 Act authorizes a total of $50 million for the Klamath Basin in California and Oregon.

Prior to the promulgation of the Environmental Protection Agency's ''National Pollutant Discharge Elimination System Permit Regulation and Effluent Limitation Guidelines and Standards for Concentrated Animal Feeding Operations'' (EPA CAFO) final rule which was published on December 15, 2002, NRCS estimated that 63 million acres of agricultural land will be treated over the six years of the program, including 44 million acres of cropland, 10 million acres of grazing land (pasture and rangeland), and 9 million acres for wildlife. The total evaluated on and off-site environmental benefits were projected to be $6.8 billion including $3.6 billion from animal waste treatment and $3.2 billion from land treatment. Some of the off-site environmental benefits are attributable to improvements made to enhance freshwater and marine water quality and fish habitat, improved aquatic recreation opportunities, reduced sedimentation of reservoirs, streams, and drainage channels, and reduced flood damages. Additional benefits are from reduced pollution of surface and ground water from agrochemical, improvements in air quality by reducing wind erosion, and enhancements to wildlife habitat.

This analysis was conducted prior to the promulgation of the EPA CAFO final rule. The CAFO rule was published on December 15, 2002 and it underwent changes up to the time of promulgation. As a result, this analysis could not accurately separate the benefits and costs associated with the CAFO rule and those associated with the EQIP proposed rule. There is still some flexibility in the EPA CAFO rule relative to which facilities will be required to have an National Pollutant Discharge Elimination System (NPDES) permit. However, it is known that the CAFO rule will apply to all facilities with more than 1,000 animal units (AUs). Since the CAFO rule claims the environmental benefits for controlling pollution on these facilities, the EQIP rule cannot make the same claim. EQIP will be a primary vehicle for funding compliance with the CAFO rule transferring some of the funding obligations from producers to EQIP so the costs associated with implementing the required pollution control measures apply to EQIP.

This analysis will be revised to take into account comments received during the Proposed Rule comment period. During this revision, a full review of the overlap of the costs and benefits associated with the CAFO and EQIP rules will be undertaken. Meanwhile, it is estimated that approximately $1.7 billion in annual benefits that were identified in the EQIP economic analysis can be attributed to the EPA CAFO regulation. Consequently, total EQIP benefits are $5.1 billion and net benefits relative to EQIP funds are $620 million and net benefits relative to total costs of −$1.5 billion.

Methodology

In developing the benefit cost analysis for EQIP, it was necessary to identify a baseline for comparison. Since EQIP was created in 1996, the regulation and policy guidance for implementing that version was considered a baseline. In addition, changes to EQIP as outlined in the 2002 Farm Bill have been implemented via a Notice of Fund Availability (NOFA) issued in fiscal year 2002. This version of the program was also used as a basis for comparison, hence a two-tiered approach to the cost-benefit analysis. In order to estimate potential program impacts, several alternatives or variations of EQIP as outlined in the NOFA have been evaluated. Costs and benefits have been quantified where possible. Costs and benefits that could not be adequately or accurately quantified are discussed qualitatively.

Public costs quantified in this analysis are the total technical and financial assistance outlined in Congressional Budget Office scoring of the 2002 Farm Bill. Private costs are out of pocket costs paid by producers based on average cost share rates of EQIP. The quantifiable benefits are a subset of the environmental benefits that accrue to the types of practices implemented with EQIP. Available data and literature were found which support benefit in the following categories:

- Reduction in sheet and rill reduction as predicted by the Universal Soil Loss Equation (USLE).
- Improved forage production on grazing lands.
- Reduced wind erosion resulting in both improved air quality and reduced soil loss.
- Increased irrigation water use efficiency.
- Benefits of wildlife viewing and hunting resulting from improved wildlife habitat management.
- Reduced fertilizer expense resulting from nutrient management practices not associated with animal waste.
- Animal waste benefits.
- Savings resulting from decreased fertilizer purchases.
- Increased recreational activity resulting from improved water quality.
- Improved commercial shell fishing.
- Reduced incidence of fish kills.
- Reduced contamination of private wells.

In order to conduct the analysis, it was necessary to make certain assumptions based on the available data.

- Practice mix for the old and new EQIP is the same.
- Quantifiable benefits and per unit benefits are constant, and all benefits are based on national averages.
- Technical assistance costs are based on the full workload and costs associated with implementing the EQIP program, and are based on a projected average contract size.
- Average annual and net present value calculations use an OMB-recommended discount factor of 7 percent.

Description of Alternatives

Tier One

The baseline for comparison is the historical EQIP as established in the 1996 Federal Agricultural Improvement and Reform Act. The baseline reflects historical funding levels projected forward along with existing policy. Alternative one consists of EQIP as defined in the 2002 NOFA. The NOFA alternative reflects increased funding levels, no buy-down provision,[2] the elimination of priority areas, and maximum payment limitation of $450,000, with a payment cap of 50 percent cost-share for any practices with an actual cost exceeding $100,000, and the inclusion of large confined animal feeding operations (CAFOs). These are the most significant changes in the program legislation in terms of economic costs and benefits.

Tier Two

For the second tier of the cost-benefit analysis, the baseline (EQIP 2002 Farm Bill as outlined in the NOFA) is compared to three alternatives. Comparison of these alternatives represents sensitivity analyses of potential policy impacts of EQIP implementation. Following is a brief description.

Alternative One—Varying AFO/CAFO Funding Allocation by Size Class

The first alternative is an analysis of various methods of allocating funds to animal feeding operations (AFO) and confined animal feeding operations (CAFO) based on the size of the operation. The specific scenarios evaluated were allocating funds equally to each size class, allocating funds according to the necessary treatment costs, allocating funds based on the total number of animal units, allocating funds based on the number of operations, and allocating funds only to middle or smaller size operations.

Alternative Two—Varying Payment Limitation Between $50,000 and $450,000

Although legislation allows a maximum payment of $450,000 per participant, the analysis considered potential benefits if different payment limitations were allowed based on local market, cultural or economic conditions. Alternative two analyzes the effects of payment limitations ranging from $50,000, up to the legislated maximum of $450,000.

[2] The buy-down provision of the old EQIP allowed producers to improve the offer index of their applications by reducing the amount of cost share funds they would expect.

Alternative Three—Varying Methods of Environmentally Targeting Funds

The third alternative analyzes the effects of different fund allocation methods which target natural resource issues and concerns. The methods are:

- Homogenous evaluation process (NOFA)—A standardized allocation formula is applied to every application in every location.
- Spatial evaluation process—More points are given based on proximity to an identified natural resource (*i.e.* an impaired stream, underground aquifer, etc.), but no participants are excluded.
- Allocation and evaluation by natural resource concern—More points are given based on an identified natural resource concern, *ie.* water quality, soil erosion, or wildlife habitat development.
- Variable cost share rates—Rates vary by practice based on effectiveness or other criteria.
- Allocation formula—Established criteria are evaluated based on a weighted formula.
- Holdback option—Funds are set aside to be allocated at a later point to locations that achieved higher levels of program efficiency based on measures which have yet to be determined.

Conclusions

Tier One—Comparison of 1996 EQIP to EQIP as Outlined in the NOFA

The EQIP Benefit Cost Analysis compares the EQIP program created in 1996 (''old program'') with those changes associated with the 2002 program implemented through the NOFA. Additionally, several alternatives associated with the proposed rule were then compared with the NOFA.

Based upon this analysis, if EQIP is implemented as described in the NOFA, it is estimated that 63 million acres of agricultural land will be treated, categorized by 44 million acres of cropland, 10 million acres of grazing land, and 9 million acres for wildlife habitat improvement if the proposed program is implemented. This results in $6.8 billion in total benefits, including $3.6 billion due to animal waste treatment and $3.2 billion due to non-animal waste land treatments.

The treatment level is expected to increase when compared to the old EQIP. An additional 0.9 million acres for sheet and rill water erosion (USLE) reduction, 2.3 million acres for wind erosion, 8.5 million acres for non-waste nutrient management, 9.6 million acres for net irrigation water reduction, 3.1 million acres for grazing productivity, and 4.1 million acres for wildlife habitat could be expected to occur on the landscape. In addition, 4.8 million animal units, and 2,755 animal feeding operations could be treated and total soil loss from agricultural land decreased by 7.5 million tons/year.

Under the assumption of the old program continuing at level funding and not accounting for the effects of the EPA CAFO rule, the net present value of benefits over the period of 2002–07 was estimated to be $2.2 billion with $0.3 billion coming from waste treatment and $1.9 billion from land treatment. Net benefits were $1.2 billion above EQIP funds and −$0.2 billion if total costs were accounted for.

Net benefits under the new program were $2.3 billion above EQIP funds and $0.2 billion if total costs were accounted for.

The difference between the net benefits estimates of the two scenarios is due to three factors:

- Scale effect associated with increased funding;
- Practice mix effect as a larger share of funds are allocated to livestock waste treatment and efficiencies; and
- Cost effect, since with cost share buy down eliminated, the government cost per treated unit is most likely increased.

Analysis suggests that implementation of EQIP outlined in the NOFA would provide substantial benefits and would help achieve program objectives of solving identified natural resource concerns while optimizing environmental benefits.

The option to include large AFOs, elimination of priority areas and discussion of increased payment limitation are discussed in detail in Tier Two of the benefit-cost analysis. Other proposed changes in EQIP are not quantified in this analysis due to lack of available data necessary to accurately evaluate effects. These include potentially shorter average contract lengths due to the fact that single practices will be allowed and contracts may terminate one year after completion of the last practice, allowing multiple contracts per tract of land, and providing higher cost share rates for limited resource producers or beginning farmers.

Tier Two—NOFA Compared to Policy Options

Alternative One: Alternatives to AFO/CAFO Funding

This analysis was generated before EPA has promulgated the CAFO rule, which regulates all large AFOs above 1,000 AUs. With the promulgation of this rule, EQIP can no longer claim environmental benefits from treatment of large producers, since they must comply with CAFO regulations. Use of EQIP resources would therefore be most efficiently used in treating the next largest non-regulated class of producers.

Allocating funds based on share of total animal units (AUs) results in 42 percent of the funding going to the largest size class (>1,000 AUs), and achieves the greatest net benefits of $2.03 billion and $1.02 billion for EQIP funds and total costs. Conversely, the allocation based on share in numbers of operations, the largest size class would only receive 4 percent of the funding and would achieve net benefits of $378 million and −$315 million for EQIP funds and total costs, respectively. Clearly, some efficiencies are lost due to the fact that it costs more per animal unit to treat the smaller size class AFOs than the large farms.

The strategy generating the highest net benefits (of the six alternatives evaluated) is to allocate the funds across the size classes according to their proportionate share in total number of AUs. That strategy would result in treatment of 15.8 million AUs, compared to as low as 9.4 million AUs for the strategy with the lowest net benefits (allocation divided evenly to the 3 smallest size classes and excluding funding to CAFOs.) The more that funds are shifted towards the (non regulated) larger AFOs, the larger the number of AUs treated, the lower the TA cost, and the greater the estimated benefits.

By comparison, if farms with greater than 1,000 animal units remained excluded from EQIP funding for animal waste practices, a total of 11,400 farms, with a total of 23 million animal units, and an overall need of $500 million in CNMP costs would remain ineligible for EQIP funding. In the scenario of not funding large CAFOs, this analysis shows that although net benefits would exceed the net EQIP costs, net benefits would be the lowest of all scenarios, with $314 million for EQIP funds and $−421 million for total costs.

Under the NOFA scenario, this analysis assumed that the 50 percent of EQIP funding designated for animal waste treatment would be divided equally across the four AFO size classes. However, from the total EQIP benefits, the benefits accruing from treatment of the largest class of AFOs, greater than 1,000 AUs, are excluded. This exclusion is appropriate now that the Environmental Protection Agency has formally published its revised CAFO rule and the benefits from treatment of those large AFOs are credited to the CAFO rule rather than the EQIP program. The definition of AFOs governed by the new CAFO rule has a broader reach than the simple ''greater than 1,000'' class defined in this analysis. At this time, the extent to which the CAFO regulation covers small and medium sized AFOs is unclear. It is assumed that the coverage is not significant.

Alternative Two: Payment Limits Between $50,000 and $450,000

Although actual payment depends on the specific conservation system applied and the cost share rate, an assumed or artificial limit on payments can be used to analyze comparative environmental benefit. Data in the benefit-cost analysis suggests that while the various payment limitations do not have great bearing on the total number of farms that would be affected by the caps, a significant number of animal units could be eligible for funding without payment limitations at the higher cap levels.

At the $450,000 payment limitation level, only one percent of the remaining livestock farms would still be capped in the costs of implementing animal waste-related conservation practices. However, those large farms control 27 percent of the animal units. These represent the biggest farms with the highest total costs, but lowest cost per animal unit.

Although there are relatively few additional farms that would be funded as payment limitations increase, these farms have a large number of animal units. Increasing the payment limitation from $50,000 to $100,000 would allow an additional 9 million animal units to be eligible for funding under the payment limitation. Increasing the payment limitation from $300,000 to $450,000 would only increase the number of animal units by fewer than 3 million.

At $50,000, only 33 percent of the livestock farms' animal units would be eligible for funding without reaching the cap. At $100,000, half of the nation's animal units would qualify for EQIP funding without reaching the cap, and at the $450,000, almost three quarters of the nation's animal units would qualify for EQIP funding without reaching the payment limitation cap.

Although legislation allows a maximum payment of $450,000 per participant, it is assumed that the Agency and states may set lower limitations if necessary based on local market, cultural or economic conditions. The economic analysis indicates, there is no economic gain associated with imposing lower payment limitations. Since the larger farms represent those with the highest number of animal units and greatest cost efficiencies per animal unit, the program benefits by allowing full participation up to the payment maximum.

Alternative Three: Alternative Application Evaluation Procedures To Ensure Cost-Effective, Environmentally Targeted Fund Allocation

Under the previous program, 65 percent of funds were allocated to specially targeted, geographically defined areas. The NOFA/Proposed Rule eliminates the process of designating funds to conservation priority areas. There is concern that this will have a negative impact on the potential environmental benefits due to the fact that funds may not be targeted to specific geographic areas, and the environmental effects of practice implementation will be diluted by scattering cost share assistance over a much broader area.

Six options for environmentally targeting EQIP funds were compared in this alternative. Results of these comparisons indicate that if technical assistance costs are constant, then adopting some form of spatial evaluation, varying cost share by practice effectiveness, *or* allocating funds with a formula based on priority resource concerns could all have positive effects on total benefits.

In the case of varying fund allocation to emphasize a particular resource concern, the share of total funds allocated in the NOFA was increased by 5 percent for one category and decreased by 1 percent for the other benefit categories identified in this analysis, with the exception of animal waste. The results of these changes indicate that targeting non-animal waste related nutrient management concerns would yield the greatest net benefits above total costs ($673 M), compared to net benefits of $180 Million for the NOFA. When compared to the NOFA, net benefits would increase respectively for each category that was emphasized using the set percentages. When compared to the NOFA, total net benefits would decrease if grazing land productivity or wind erosion categories were to receive an increased share of funds. Although targeting by resource concern can have overall positive effects on benefits, emphasizing one particular resource concern may overlook the relationships between natural resource effects, and fail to capitalize on them.

In the case of varying cost share levels by practice, the National priorities are emphasized by reducing the cost share rates for practices that have primary impacts in the other benefit categories. For the purposes of this analysis, it is assumed that the average cost share for EQIP is 75 percent in the NOFA. This rate is decreased to 60 percent (mild) and to 50 percent (aggressive) for erosion reduction, grazing productivity, and wildlife habitat improvement. The results indicate that pursuing National priorities with a cost share mechanism can increase total benefits by 5 percent in the ''mild'' scenario, and by 8 percent for the more aggressive scenario. This rule allows flexibility at the state level to provide higher cost-share rates for practices that impact local resource concerns while reducing cost-share rates for practices that do not optimize benefits at the local level.

In addition to these methods, a holdback of funds for distribution based upon an objective comparison of states using performance criteria can be a useful tool that could increase net benefits and increase program efficiency. Data suggests that in spite of the removal of the requirement for geographically based priority areas, other approaches to targeting of EQIP funds to the most critical natural resource concerns are feasible and will have positive effects on total program benefits. This will ensure that environmental benefits are optimized and program objectives are met, but without excluding participation by persons outside of a designated boundary.

NRCS will revise and enhance this analysis for the final rule. Future analysis will seek to evaluate alternative allocations of program dollars across different conservation practices and quantify and estimate their impacts.

To better implement the program to optimize environmental benefits, as required by the 2002 Act, NRCS seeks public comment, data, or references that can quantitatively or qualitatively enhance its analytical efforts. NRCS especially welcomes comments or data on levels or trends in conservation technology adoption, the on-site and off-site environmental benefits and economic returns to various conservation practices, and other literature about incentive schemes for technology adoption.

List of Subjects in 7 CFR Part 1466

Administrative practices and procedures, conservation, natural resources, water resources, wetlands, payment rates.

For the reasons stated in the preamble, the Commodity Credit Corporation proposes to revise Part 1466 of Title 7 of the Code of Federal Regulations to read as follows:

PART 1466—ENVIRONMENTAL QUALITY INCENTIVES PROGRAM

Subpart A—General Provisions

Sec.
1466.1 Applicability.
1466.2 Administration.
1466.3 Definitions.
1466.4 National priorities.
1466.5 National allocation and management
1466.6 State allocation and management
1466.7 Outreach activities.
1466.8 Program requirements.
1466.9 EQIP plan of operations.
1466.10 Conservation practices.
1466.11 Technical and other assistance provided by qualified personnel not affiliated with USDA.

Subpart B—Contracts and Payments

1466.20 Application for contracts and selecting offers from producers.
1466.21 Contract requirements.
1466.22 Conservation practice operation and maintenance.
1466.23 Cost-share rates and incentive payment levels.
1466.24 EQIP payments.
1466.25 Contract modifications and transfers of land.
1466.26 Contract violations and termination.
1466.27 Conservation Innovation Grants.

Subpart C—General Administration

1466.30 Appeals.
1466.31 Compliance with regulatory measures.
1466.32 Access to operating unit.
1466.33 Performance based upon advice or action of representatives of NRCS.
1466.34 Offsets and assignments.
1466.35 Misrepresentation and scheme or devise.

Authority: 15 U.S.C. 714b and 714c; 16 U.S.C. 3839aa—3839aa—8.

Subpart A—General Provisions

§ 1466.1 Applicability.

Through the Environmental Quality Incentives Program (EQIP), the Commodity Credit Corporation (NRCS) provides assistance and to eligible farmers and ranchers to address soil, water, air, and related natural resources concerns, and to encourage enhancements on their lands in an environmentally beneficial and cost-effective manner. The purposes of the program are achieved by implementing structural and land management conservation practices on eligible land.

§ 1466.2 Administration.

(a) The funds, facilities, and authorities of the Commodity Credit Corporation (CCC) are available to NRCS for carrying out EQIP. Accordingly, where NRCS is mentioned in this part, it also refers to the CCC's funds, facilities, and authorities where applicable.

(b) NRCS and the Farm Service Agency (FSA) will consult, at the National level, in establishing policies, priorities, and guidelines related to the implementation of this part. FSA may continue to participate in EQIP through participation on State Technical Committees and Local Work Groups.

(c) NRCS supports ''locally-led conservation'' by using State Technical Committees at the state level and Local Work Groups at the county/parish level to advise NRCS on technical issues relating to the implementation of EQIP such as:

(1) Identification of priority natural resource concerns;

(2) Identification of which conservation practices should be eligible for financial assistance; and

(3) Establishment of cost-share rates and incentive payment levels.

(d) No delegation in this part to lower organizational levels shall preclude the Chief of NRCS or a Designated Conservationist from determining any issues arising under this part or from reversing or modifying any determination made under this part.

(e) NRCS may enter into cooperative agreements with other Federal or State agencies, Indian Tribes, conservation districts, units of local government, and public and private not-for-profit organizations to assist NRCS with implementation of the program.

§ 1466.3 Definitions.

The following definitions will apply to this part and all documents issued in accordance with this part, unless specified otherwise:

Agricultural land means cropland, rangeland, pasture, private non-industrial forest land, and other land on which crops or livestock are produced.

Agricultural operation means an area covered by the ground and surface water conservation program requirements and used to establish net savings.

Animal waste management facility means a structural conservation practice used for storing or treating animal waste.

Applicant means a producer, either an individual or entity, who has requested in writing to participate in EQIP. Producers who are members of a joint operation, as defined in 7 CFR part 1400, shall be considered one applicant.

Beginning Farmer or Rancher means an individual or entity who:

(1) Has not operated a farm or ranch, or who has operated a farm or ranch for not more than 10 consecutive years. This requirement applies to all members of an entity, and

(2) Will materially and substantially participate in the operation of the farm or ranch.

(i) In the case of a contract with an individual, individually or with the immediate family, material and substantial participation requires that the individual provide substantial day-to-day labor and management of the farm or ranch, consistent with the practices in the county or State where the farm is located

(ii) In the case of a contract with an entity, all members must materially and substantially participate in the operation of the farm or ranch. Material and substantial participation requires that each of the members provide some amount of the management, or labor and management necessary for day-to-day activities, such that if each of the members did not provide these inputs, operation of the farm or ranch would be seriously impaired.

Chief means the Chief of NRCS, USDA, or designee (State Conservationist or Designated Conservationist).

Comprehensive Nutrient Management Plan (CNMP) means a conservation system that is unique to an animal feeding operation (AFO). A CNMP is a grouping of conservation practices and management activities which, when implemented as part of a conservation system, will help to ensure that both production and natural resource protection goals are achieved. A CNMP incorporates practices to use animal manure and organic by-products as a beneficial resource. A CNMP addresses natural resource concerns dealing with soil erosion, manure, and organic by-products and their potential impacts on all natural resources including water and air quality, which may derive from an AFO. A CNMP is developed to assist an AFO owner/operator in meeting all applicable local, Tribal, State, and Federal water quality goals or regulations. For nutrient impaired stream segments or water bodies, additional management activities or conservation practices may be required by local, Tribal, State, or Federal water quality goals or regulations.

Confined livestock feeding operation means an animal feeding operation that stables, confines, feeds, or maintains animals for a total of 45 days or more in any 12-month period and does not sustain crops, vegetation, forage growth, or post-harvest residues in the normal growing season over any portion of the confined area.

Conservation district means any district or unit of State or local government formed under State or territorial law for the express purpose of developing and carrying out a local soil and water conservation program. Such district or unit of government may be referred to as a ''conservation district'', ''soil conservation district'', ''soil and water conservation district'', ''resource conservation district'', ''land conservation committee'', or similar name.

Conservation Innovation Grants means competitive grants made under EQIP to individuals, governmental and non-governmental organizations to stimulate innovative methods to leverage Federal funds to implement EQIP to enhance and protect the environment in conjunction with agricultural production.

Conservation practice means a specified treatment, such as a structural or land management practice, that is planned and applied according to NRCS standards and specifications.

Contract means a legal document that specifies the rights and obligations of any person who has been accepted to participate in the program. An EQIP contract is a cooperative agreement for the transfer of assistance to the participant as opposed to procurement contract.

Cost-share payment means the financial assistance from NRCS to the participant to share the cost of installing a structural conservation practice.

Designated Conservationist means an NRCS employee whom the State Conservationist has designated as responsible for administration of EQIP in a specific area.

EQIP plan of operations means the identification, location and timing of conservation practices, both structural and land management, that the producer proposes to implement in order to address the priority natural resource concerns and optimize environmental benefits.

Field office technical guide means the official NRCS guidelines, criteria, and standards for planning and applying conservation treatments and conservation management systems. It contains detailed information on the conservation of soil, water, air, plant, and animal resources applicable to the local area for which it is prepared.

Incentive payment means the financial assistance from NRCS to the participant in an amount and at a rate determined appropriate to encourage the participant to perform a land management practice that would not otherwise be initiated without program assistance.

Indian Tribe means any Indian Tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*) that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

Indian trust lands means real property in which:

(1) The United States holds title as trustee for an Indian or Tribal beneficiary, or

(2) An Indian or Tribal beneficiary holds title and the United States maintains a trust relationship.

Individual means a person who can receive EQIP payments.

Land management practice means conservation practices that primarily use site-specific management techniques and methods to conserve, protect from degradation, or improve soil, water, air, or related natural resources in the most cost-effective manner. Land management practices include, but are not limited to, nutrient management, manure management, integrated pest management, integrated crop management, irrigation water management, tillage or residue management, stripcropping, contour farming, grazing management, and wildlife habitat management.

Lifespan means the period of time during which a conservation practice is to be maintained and used for the intended purpose.

Limited Resource Farmer or Rancher means:

(1) A person with direct or indirect gross farm sales not more than $100,000 (to be increased starting in FY 2004 to adjust for inflation), and

(2) Has a total household income at or below the national poverty level for a family of four, or less than 50 percent of county median household income (to be determined annually), in each of the previous two years.

Liquidated damages means a sum of money stipulated in the EQIP contract which the participant agrees to pay NRCS if the participant fails to adequately complete the contract. The sum represents an estimate of the anticipated or actual harm caused by the failure, and reflects the difficulties of proof of loss and the inconvenience or non-feasibility of otherwise obtaining an adequate remedy.

Livestock means animals produced for food or fiber such as dairy cattle, beef cattle, poultry, turkeys, swine, sheep, horses, fish and other animals raised by aquaculture, or animals the State Conservationist identifies with the advice of the State Technical Committee.

Livestock production means farm and ranch operations involving the production, growing, raising, breeding, and reproduction of livestock or livestock products.

Local work group means representatives of local offices of FSA, the Cooperative State Research, Education, and Extension Service, the conservation district, and other Federal, State, and local government agencies, including Tribes, with expertise in natural resources who advise NRCS on decisions related to EQIP implementation.

National measures means measurable criteria identified by the Chief of NRCS, with the advice of other Federal agencies and State Conservationists, to help EQIP achieve the National Priorities and statutory requirements.

National priorities means resource issues identified by the Chief of NRCS, with advice from other Federal agencies and State Conservationists, which will be used to determine the distribution of EQIP funds and to guide local implementation of EQIP.

Operation and maintenance means work performed by the participant to keep the applied conservation practice functioning for the intended purpose during its life span. Operation includes the administration, management, and performance of non-maintenance actions needed to keep the completed practice safe and functioning as intended. Maintenance includes work to prevent deterioration of the practice, repairing damage, or replacement of the practice to its original condition if one or more components fail.

Participant means a producer who is a party to an EQIP contract.

Priority natural resource concern(s) means an existing or pending degradation of natural resource condition(s) as identified locally by the State Conservationist or Designee with advice from the State Technical Committee and Local Work Groups.

Producer means a person who is engaged in livestock or agricultural production.

Regional Conservationist means the NRCS employee authorized to direct and supervise NRCS activities in an NRCS region.

Related natural resources means natural resources that are associated with soil and water, including air, plants, and animals and the land or water on which they may occur, including grazing land, wetland, forest land, and wildlife habitat.

Secretary means the Secretary of the U. S. Department of Agriculture.

State Conservationist means the NRCS employee authorized to direct and supervise NRCS activities in a State, the Caribbean Area, or the Pacific Basin Area.

State Technical Committee means a committee established by the Secretary in a State pursuant to 16 U.S.C. 3861.

Structural practice means a conservation practice that involves establishing, constructing, or installing a site-specific measure to conserve, protect from degradation, or improve soil, water, air, or related natural resources in the most cost-effective manner. Examples include, but are not limited to, animal waste management facilities, terraces, grassed waterways, tailwater pits, livestock water developments, contour grass strips, filterstrips, critical area plantings, tree planting, permanent wildlife habitat and capping of abandoned wells.

Technical assistance means the personnel and support resources needed to conduct conservation planning; conservation practice survey, layout, design, installation, and certification; training, certification, and provide quality assurance of professional conservationists; and evaluation and assessment of the program.

Technical service provider means an individual, private-sector entity, or public agency certified by the State Conservationist to provide technical services to program participants or to NRCS.

Wildlife means birds, fishes, reptiles, amphibians, invertebrates, and mammals along with all other non-domesticated animals.

§ 1466.4 National priorities.

(a) The following National priorities will be used in the implementation of EQIP:

(1) Reductions of nonpoint source pollutants such as nutrients, sediment, or pesticides and excess salinity in impaired watersheds consistent with TMDL's where available as well as the reduction of groundwater contamination and the conservation of ground and surface water resources;

(2) Reduction of emissions, such as particulate matter, NO_X, volatile organic compounds, and ozone precursors and depleters that contribute to air quality impairment violations of National Ambient Air Quality Standards;

(3) Reduction in soil erosion and sedimentation from unacceptability high rates on highly erodible land; and

(4) Promotion of at-risk species habitat recovery.

(b) With the advice of other Federal agencies, NRCS will undertake periodic reviews of the National priorities and the effects of program delivery at the state and local level. The Chief intends to annually review the National priorities to adapt the program to address emerging resource issues. NRCS will:

(1) Use the National priorities to guide the allocation of EQIP funds to the State NRCS offices,

(2) Use the National priorities to assist with prioritization and selection of EQIP applications at the state and local levels, and

(3) Periodically review and update the National priorities utilizing input from the public and affected stakeholders to ensure that the program continues to address national resource needs.

§ 1466.5 National allocation and management.

The Chief allocates EQIP funds to the State Conservationists to implement EQIP at the state level. In order to optimize the overall environmental benefits over the duration of the program, the Chief of NRCS will:

(a) Use an EQIP fund allocation formula that reflects National priorities and measures and that uses available natural resource and resource concerns data to distribute funds to the states level. This procedure will be updated periodically to reflect adjustments to National priorities and information about resource concerns and program performance. The data used in the allocation formula will be updated as it becomes available.

(b) Provide an incentive award to States that demonstrate a high level of program performance in implementing EQIP considering factors such as strategically planning EQIP implementation, the use of long lived and cost-effective practices, benefits to multiple resources, the efficiency and cost-effectiveness of program delivery, achieving National priorities, the use of Technical Service Providers, contracts with Limited Resource Producers, and encouraging innovation and the leveraging of EQIP funds. These funds will be made available annually from a reserve established at the National level when funds become available.

(c) Use NRCS's Integrated Accountability System to establish state level EQIP performance goals and treatment objectives.

(d) Ensure that National, state and local level information regarding program implementation such as resource priorities, eligible practices, ranking processes, allocation of base and reserve funds, and program achievements is made available to the public using available technology such as the internet.

(e) Consult with State Conservationists and other Federal agencies with the appropriate expertise and information when evaluating the considerations described in this section.

(f) Authorize the State Conservationist, with advice from the State Technical Committee and Local Work Groups, to determine how funds will be used and how the program will be administered to achieve National priorities and measures in each state.

§ 1466.6 State allocation and management.

The State Conservationist, will:

(a) Identify State priority natural resource concerns with the advice of the State Technical Committee that incorporate National priorities and measures and will use NRCS's Integrated Accountability System to establish local level EQIP performance goals and treatment objectives;

(b) Identify, as appropriate and necessary, Designated Conservationists who are NRCS employees that are assigned the responsibility to administer EQIP in specific areas, and

(c) Use the following to determine how to manage the EQIP program and how to allocate funds within a state:

(1) The nature and extent of natural resource concerns at the state and local level;

(2) The availability of human resources, incentive programs, education programs, and on-farm research programs from Federal, State, Indian Tribe, and local levels, both public and private, to assist with the activities related to the priority natural resource concerns;

(3) The existence of multi-county and/or multi-state collaborative efforts to address regional priority natural resource concerns;

(4) Ways and means to measure performance and success; and

(5) The degree of difficulty that producers face in complying with environmental laws.

§ 1466.7 Outreach activities.

NRCS will establish program outreach activities at the National, State, and local levels in order to ensure that producers whose land has environmental problems and priority natural resource concerns are aware, informed, and know that they may be eligible to apply for program assistance. Special outreach will be made to eligible producers with historically low participation rates, including but not restricted to limited resource producers, small-scale producers, Indian Tribes, Alaska natives, and Pacific Islanders.

§ 1466.8 Program requirements.

(a) Program participation is voluntary. The applicant develops an EQIP plan of operations for the agricultural land to be treated that serves as the basis for the EQIP contract. NRCS provides participants with cost-share or incentive payments to apply needed conservation practices and land-use adjustments.

(b) To be eligible to participate in EQIP, an applicant must:

(1) Be in compliance with the highly erodible land and wetland conservation provisions found at 7 CFR part 12;

(2) Have control of the land for the life of the proposed contract period.

(i) An exception may be made by the Chief in the case of land allotted by the Bureau of Indian Affairs (BIA), Tribal land, or other instances in which the Chief determines that there is sufficient assurance of control;

(ii) If the applicant is a tenant of the land involved in agricultural production, the applicant shall provide the Chief with the written concurrence of the landowner in order to apply a structural conservation practice.

(3) Submit an EQIP plan of operations that is acceptable to NRCS as being in compliance with the terms and conditions of the program;

(4) Comply with the provisions at 7 CFR 1412.304 for protecting the interests of tenants and sharecroppers, including provisions for sharing, on a fair and equitable basis, payments made available under this part, as may be applicable; and

(5) Supply information, as required by NRCS, to determine eligibility for the program, including information to verify the applicant's status as a limited resource farmer or rancher or beginning farmer or rancher.

(c) Land used as cropland, rangeland, pasture, private non-industrial forest land, and other land on which crops or livestock are produced, including agricultural land that NRCS determines poses a threat to soil, water, air, or related natural resources, may be eligible for enrollment in EQIP. However, land may be considered for enrollment in EQIP only if NRCS determines that the land is:

(1) Privately owned land;

(2) Publicly owned land where:

(i) The land is under private control for the contract period and is included in the participant's operating unit; and

(ii) The conservation practices will contribute to an improvement in the identified natural resource concern; or

(3) Tribal, allotted, or Indian trust land.

(d) Sixty percent of available EQIP financial assistance will be targeted to conservation practices related to livestock production, including practices on grazing lands and other lands directly attributable to livestock production, as measured at the National level.

§ 1466.9 EQIP plan of operations.

(a) All conservation practices in the EQIP plan of operations must be carried out in accordance with the applicable NRCS field office technical guide.

(b) The EQIP plan of operations must include:

(1) A description of the participant's specific conservation and environmental objectives to be achieved;

(2) To the extent practicable, the quantitative or qualitative goals for achieving the participant's conservation and environmental objectives;

(3) A description of one or more conservation practices in the conservation management system to be implemented to achieve the conservation and environmental objectives;

(4) A description of the schedule for implementing the conservation practices, including timing and sequence; and

(5) Information that will enable evaluation of the effectiveness of the plan in achieving the environmental objectives.

(c) An EQIP plan of operations that includes an animal waste storage or treatment facility must include a comprehensive nutrient management plan.

(d) Participants are responsible for implementing the EQIP plan of operations.

(e) A participant may receive assistance to implement an EQIP plan of operations for water conservation with funds authorized by section 1240I of the 1985 Act, 16 U.S.C. 3839aa–9, only if the assistance will facilitate a net savings in ground or surface water resources in the agricultural operation of the producer.

§ 1466.10 Conservation practices.

(a) NRCS will determine which structural and land management practices are eligible for program payments. To be considered as an eligible conservation practice, the practices must provide beneficial, cost-effective approaches for participants to change or adapt operations to address priority natural resource concerns. A list of eligible practices will be available at the local NRCS office.

(b) Cost-share and incentive payments will not be made to a participant for a conservation practice that the applicant has applied prior to application for the program.

(c) Cost-share and incentive payments will not be made to a participant who has implemented or initiated the implementation of a conservation practice prior to approval of the contract unless a waiver was granted by the State Conservationist or Designated Conservationist prior to the installation of the practice.

(d) A participant will be eligible for cost-share or incentive payments for irrigation related structural and land management practices only on land that has been irrigated for three of the last five years prior to application for assistance.

(e) Where new technologies or conservation practices that provide a high potential for optimizing environmental benefits have been developed, NRCS may approve interim conservation practice standards and financial assistance for pilot work to evaluate and assess the performance, efficacy, and effectiveness of the technology or conservation practices.

§ 1466.11 Technical and other assistance provided by qualified personnel not affiliated with USDA.

(a) NRCS may use the services of qualified technical service providers in performing its responsibilities for technical assistance.

(b) Participants may use technical and other assistance from qualified personnel of other Federal, State, and local agencies, or Indian Tribes who are certified as Technical Service Providers by NRCS.

(c) Technical and other assistance provided by qualified personnel not affiliated with USDA may include, but is not limited to, conservation planning; conservation practice survey, layout, design, installation, and certification; information, education, and training for producers; and training, certification, and quality assurance for professional conservationists. Payments to certified technical assistance providers will be made only for an application that has been approved for payments.

(d) NRCS retains approval authority over certification of work done by non-NRCS personnel for the purpose of approving EQIP payments.

(e) When NRCS authorizes payment for a practice that is certified by non-USDA personnel, the technical service provider must indemnify and hold NRCS and the program participant harmless for any costs, damages, claims, liabilities and judgments arising from past, present and future negligent acts or omissions of the technical service provider in connection with the technical service provided.

Subpart B—Contracts and Payments

§ 1466.20 Application for contracts and selecting offers from producers.

(a) Any producer who has eligible land may submit an application for participation in the EQIP. Applications are accepted throughout the year. Producers who are members of a joint operation may file a single application for the joint operation.

(b) The State Conservationist or Designated Conservationist with advice from the State Technical Committee or Local Work Groups will develop a ranking process to prioritize applications for funding which address priority natural resource concerns. The State Conservationist or Designated Conservationist will periodically select for funding the applications based on applicant eligibility and the NRCS ranking process. The State Conservationist or Designated Conservationist will rank all applications according to the following factors:

(1) Use of cost-effective conservation practices,

(2) The magnitude of the environmental benefits resulting from the treatment of the priority natural resource concerns,

(3) Treatment of multiple resource concerns,

(4) Use of conservation practices that provide environmental enhancements for a longer period of time,

(5) Compliance with Federal, state or local regulatory requirements concerning soil, water and air quality; wildlife habitat; and ground and surface water conservation, and

(6) Other locally defined pertinent factors, such as the location of the conservation practice, the extent of natural resource degradation, and the degree of cooperation by local producers to achieve environmental improvements.

(c) If the State Conservationist determines that the environmental values of two or more applications for cost-share payments or incentive payments are comparable, the State Conservationist will not assign a higher priority to the application solely because it would present the least cost to the program.

(d) The ranking will determine which applications will be awarded contracts. The approving authority for EQIP contracts will be the State Conservationist or designee except that:

(1) The approving authority for any EQIP contract that contains a structural conservation practice with a cost-share greater than 50 percent is the State Conservationist.

(2) The approving authority for any EQIP contract with total payment greater than $100,000 is the NRCS Regional Conservationist.

§ 1466.21 Contract requirements.

(a) In order for a participant to receive cost-share or incentive payments, the participant must enter into a contract agreeing to implement one or more conservation practices. Both cost-share payments and incentive payments may be included in a contract.

(b) An EQIP contract will:

(1) Identify all conservation practices to be implemented, the timing of practice installation, and applicable cost-shares and incentive payments allocated to the practices under the contract;

(2) Be for a minimum duration of 1 year after completion of the last practice, but not more than 10 years;

(3) Incorporate all provisions as required by law or statute, including requirements that the participant will:

(i) Not conduct any practices on the farm or ranch unit under the contract, or agricultural operation of the producer for ground and surface water conservation contracts, that would tend to defeat the purposes of the contract;

(ii) Refund any program payments received with interest, and forfeit any future payments under the program, on the violation of a term or condition of the contract, consistent with the provisions of § 1466.25;

(iii) Refund all program payments received on the transfer of the right and interest of the producer in land subject to the contract, unless the transferee of the right and interest agrees to assume all obligations of the contract, consistent with the provisions of § 1466.24;

(iv) Implement a comprehensive nutrient management plan when the EQIP contract includes a waste storage or waste treatment facility; and

(v) Supply information as may be required by NRCS to determine compliance with the contract and requirements of the program.

(4) Specify the participant's requirements for operation and maintenance of the applied conservation practices consistent with the provisions of § 1466.22; and

(5) Specify any other provision determined necessary or appropriate by NRCS.

(c) The participant must apply at least one contracted practice within the first 12 months of signing a contract.

§ 1466.22 Conservation practice operation and maintenance.

The contract will incorporate the operation and maintenance of conservation practices applied under the contract. The participant must operate and maintain each conservation practice installed under the contract for its intended purpose for the life span of the conservation practice as determined by NRCS. Conservation practices installed before the execution of a contract, but needed in the contract to obtain the environmental benefits agreed upon must be operated and maintained as specified in the contract. NRCS may periodically inspect a conservation practice during the lifespan of the practice as specified in the contract to ensure that operation and maintenance are occurring. When NRCS finds that a participant is not operating and maintaining practices in an appropriate manner, NRCS will request a refund of cost-share or incentive payments made for that practice under the contract.

§ 1466.23 Cost-share rates and incentive payment levels.

(a) *Determining cost-share payment rates.* (1) The maximum cost-share payments made to a participant under the program will not be more than 75 percent of the actual cost of a structural practice, as determined by the State Conservationist or Designated Conservationist, except that for a Limited Resource Farmer or Rancher or Beginning Farmer and Rancher cost-share payments may be up to 90 percent, as determined by the State Conservationist or Designated Conservationist.

(2) Cost-share rates and incentive payment levels for conservation practices will be established by the State Conservationist or Designated Conservationist with advice from the State Technical Committee and Local Work Groups in consideration of the practice cost-effectiveness, longevity and environmental benefit achieved. The State Conservationist or Designated Conservationist will develop a list of eligible conservation practices with varied cost-share rates and will set:

(i) Cost-share rates and incentive payment levels that reflect a conservation practice cost-effectiveness and innovation,

(ii) Cost-share rates and incentive payment levels for practices based on the degree of treatment of priority natural resource concerns,

(iii) Cost-share rates and incentive payment levels that reflect the number of resource concerns a practice will address,

(iv) Cost-share rates and incentive payment levels that reflect a practice's longevity of beneficial environmental effect, and

(v) Cost-share rates and incentive payment levels based on other pertinent local considerations.

(3) The cost-share payments to a participant under the program will be reduced proportionately below the rate established by the State Conservationist or Designated Conservationist, or the cost-share limit as set in paragraph (a)(2) of this section, to the extent that total financial contributions for a structural practice from all public and private sources exceed 100 percent of the actual cost of the practice.

(b) Determining incentive payment levels. NRCS will provide incentive payments to participants for a land management practice or to develop a comprehensive nutrient management plan in an amount and at a rate necessary to encourage a participant to perform the practice that would not otherwise be initiated without government assistance. The State Conservationist or Designated Conservationist, with the advice of the State Technical Committee or Local Work Groups, may consider establishing limits on the extent of land management practices that may be included in a contract.

§ 1466.24 EQIP payments.

(a) Except as provided in paragraph (b) of this section, the total amount of cost-share and incentive payments paid to an individual or entity under this part may not exceed an aggregate of $450,000, directly or indirectly, for all contracts entered into during fiscal years 2002 through 2007.

(b) To determine eligibility for payments, NRCS will use the provisions in 7 CFR part 1400 related to the definition of *person* and the *limitation of payments,* except that:

(1) States, political subdivisions, and entities thereof will not be considered to be persons eligible for payment.

(2) For purposes of applying the payment limitations provided for in this section, the following will not apply: the provisions in 7 CFR part 1400, subpart C for determining whether persons are actively engaged in farming, subpart E for limiting payments to certain cash rent tenants, and subpart F as the provisions apply to determining whether foreign persons are eligible for payment.

(3) To be eligible to participate in EQIP, all individuals considered to be part of an application must provide a social security number.

(4) To be eligible to participate in EQIP, any entity, as identified in 7 CFR part 1400, must provide a list of all members of the entity and embedded entities along with the member's social security numbers and percentage interest in the entity.

(5) With regard to contracts on Tribal land, Indian trust land, or BIA allotted land, payments exceeding the payment limitation may be made to the Tribal venture if an official of BIA or a Tribal official certifies in writing that no one person directly or indirectly will receive more than the limitation. The Tribal entity must also provide, annually, listing of individuals and payments made, by social security number, during the previous year for calculation of overall payment limitations. The Tribal entity must also produce, at the request by NRCS, proof of payments made to the individuals that incurred the costs for installation of the practices.

(6) Any cooperative association of producers that markets commodities for producers will not be considered to be a person eligible for payment.

(7) Eligibility for payments in accordance with 7 CFR part 1400, subpart G, average adjusted gross income limitation, will be determined at the time of contract approval.

(8) Eligibility for higher cost-share payments in accordance with paragraph (a)(1) of this section will be determined at the time of approval of the contract.

(c) A participant will not be eligible for cost-share or incentive payments for conservation practices on eligible land if the participant receives cost-share payments or other benefits for the same practice on same land under any other conservation program administered by USDA.

(d) Before NRCS will approve and issue any cost-share or incentive payment, the participant must certify that the conservation practice has been completed in accordance with the contract, and NRCS or other approved technical service provider certifies that the practice has been carried out in accordance with the applicable NRCS field office technical guide.

§ 1466.25 Contract modifications and transfers of land.

(a) The participant and NRCS may modify a contract if the participant and NRCS agree to the contract modification and the EQIP plan of operations is revised in accordance with NRCS requirements and is approved by the Designated Conservationist.

(b) The participant and NRCS may agree to transfer a contract to another producer. The transferee must be determined by NRCS to be eligible to participate in EQIP and must assume full responsibility under the contract, including operation and maintenance of those conservation practices already installed and to be installed as a condition of the contract.

(c) NRCS may require a participant to refund all or a portion of any assistance earned under EQIP if the participant sells or loses control of the land under an EQIP contract and the new owner or controller is not eligible to participate in the program or refuses to assume responsibility under the contract.

§ 1466.26 Contract violations and termination.

(a) (1) If NRCS determines that a participant is in violation of the terms of a contract or documents incorporated by reference into the contract, NRCS shall give the participant a reasonable time, as determined by NRCS, to correct the violation and comply with the terms of the contract and attachments thereto. If a participant continues in violation, NRCS may terminate the EQIP contract.

(2) Notwithstanding the provisions of paragraph (a)(1) of this section, a contract termination shall be effective immediately upon a determination by NRCS that the participant has submitted false information or filed a false claim, or engaged in any act for which a finding of ineligibility for payments is permitted under the provisions of § 1466.35, or in a case in which the actions of the party involved are deemed to be sufficiently purposeful or negligent to warrant a termination without delay.

(b)(1) If NRCS terminates a contract, the participant will forfeit all rights for future payments under the contract and shall refund all or part of the payments received, plus interest determined in accordance with 7 CFR part 1403. NRCS has the option of requiring only partial refund of the payments received if a previously installed conservation practice can function independently, is not adversely affected by the violation or the absence of other conservation practices that would have been installed under the contract, and the participant agrees to operate and maintain the installed conservation practice for the lifespan of the practice.

(2) If NRCS terminates a contract due to breach of contract or the participant voluntarily terminates the contract before any contractual payments have been made, the participant will forfeit all rights for further payments under the contract and shall pay such liquidated damages as are prescribed in the contract. NRCS will have the option to waive the liquidated damages, depending upon the circumstances of the case.

(3) When making contract termination decisions, NRCS may reduce the amount of money owed by the

participant by a proportion that reflects the good faith effort of the participant to comply with the contract or the hardships beyond the participant's control that have prevented compliance with the contract.

(4) The participant may voluntarily terminate a contract if NRCS determines that termination is in the public interest.

(5) In carrying out its role in this section, NRCS may consult with the local conservation district.

§ 1466.27 Conservation Innovation Grants.

[Reserved]

Subpart C—-General Administration

§ 1466.30 Appeals.

A participant may obtain administrative review of an adverse decision under EQIP in accordance with 7 CFR parts 11 and 614. Determination in matters of general applicability, such as payment rates, payment limits, and cost-share percentages, the designation of identified priority natural resource concerns, and eligible conservation practices are not subject to appeal.

§ 1466.31 Compliance with regulatory measures.

Participants who carry out conservation practices shall be responsible for obtaining the authorities, rights, easements, or other approvals necessary for the implementation, operation, and maintenance of the conservation practices in keeping with applicable laws and regulations. Participants shall be responsible for compliance with all laws and for all effects or actions resulting from the participant's performance under the contract.

§ 1466.32 Access to operating unit.

Any authorized NRCS representative shall have the right to enter an operating unit or tract for the purpose of ascertaining the accuracy of any representations made in a contract or in anticipation of entering a contract, as to the performance of the terms and conditions of the contract. Access shall include the right to provide technical assistance, inspect any work undertaken under the contract, and collect information necessary to evaluate the performance of conservation practices in the contract. The NRCS representative shall make a reasonable effort to contact the participant prior to the exercise of this provision.

§ 1466.33 Performance based upon advice or action of representatives of NRCS.

If a participant relied upon the advice or action of any authorized representative of NRCS and did not know, or have reason to know, that the action or advice was improper or erroneous, NRCS may accept the advice or action as meeting the requirements of the program and may grant relief, to the extent it is deemed desirable by NRCS, to provide a fair and equitable treatment because of the good-faith reliance on the part of the participant. The financial or technical liability for any action by a participant that was taken based on the advice of a non-USDA certified technical service provider will remain with the certified technical service provider and will not be assumed by NRCS or NRCS when NRCS or NRCS authorizes payment.

§ 1466.34 Offsets and assignments.

(a) Except as provided in paragraph (b) of this section, any payment or portion thereof to any person shall be made without regard to questions of title under State law and without regard to any claim or lien against the crop, or proceeds thereof, in favor of the owner or any other creditor except agencies of the U.S. Government. The regulations governing offsets and withholdings found at 7 CFR part 1403 shall be applicable to contract payments.

(b) Any producer entitled to any payment may assign any payments in accordance with regulations governing assignment of payment found at 7 CFR part 1404.

§ 1466.35 Misrepresentation and scheme or device.

(a) A producer who is determined to have erroneously represented any fact affecting a program determination made in accordance with this part shall not be entitled to contract payments and must refund to NRCS all payments, plus interest determined in accordance with 7 CFR part 1403.

(b) A producer who is determined to have knowingly:

(1) Adopted any scheme or device that tends to defeat the purpose of the program;

(2) Made any fraudulent representation; or

(3) Misrepresented any fact affecting a program determination, shall refund to NRCS all payments, plus interest determined in accordance with 7 CFR part 1403 received by such producer with respect to all contracts. The producer's interest in all contracts shall be terminated.

Signed in Washington, DC on January 28, 2003.

Bruce I. Knight,

Vice President, Commodity Credit Corporation, Chief, Natural Resources Conservation Service.

[FR Doc. 03–2642 Filed 2–7–03; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 94

[Docket No. 02–109–1]

Importation of Beef From Uruguay

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the regulations governing the importation of certain animals, meat, and other animal products by allowing, under certain conditions, the importation of fresh (chilled or frozen) beef from Uruguay. Based on the evidence in a recent risk assessment, we believe that fresh (chilled or frozen) beef can be safely imported from Uruguay provided certain conditions are met. This action would provide for the importation of beef from Uruguay into the United States while continuing to protect the United States against the introduction of foot-and-mouth disease.

DATES: We will consider all comments that we receive on or before April 11, 2003.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 02–109–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 02–109–1. If you use e-mail, address your comment to *regulations@aphis.usda.gov.* Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and ''Docket No. 02–109–1'' on the subject line.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html.*

FOR FURTHER INFORMATION CONTACT: Dr. Hatim Gubara, Senior Staff Veterinarian, Regionalization Evaluation Services Staff, VS, APHIS, 4700 River Road Unit 38, Riverdale, MD 20737–1231; (301) 734–4356.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 94 (referred to below as the regulations) prohibit or restrict the importation of certain animals and animal products into the United States to prevent the introduction of various animal diseases, including rinderpest, foot-and-mouth disease (FMD), African swine fever, hog cholera, and swine vesicular disease. These are dangerous and destructive communicable diseases of ruminants and swine. Section 94.1 of the regulations lists regions of the world that are considered free of rinderpest or free of both rinderpest and FMD. The Animal and Plant Health Inspection Service (APHIS) considers rinderpest or FMD to exist in all regions of the world not listed.

On November 1, 1995, we published in the **Federal Register** a final rule (60 FR 55440–55443, Docket No. 95–050–2) adding Uruguay to the list in § 94.1 of regions considered to be free of rinderpest and FMD and to the list in § 94.11 of regions that, although free of rinderpest and FMD, are subject to certain restrictions on importation of meat and other animal products. On October 26, 2000, Uruguay's Ministry of Livestock, Agriculture and Fisheries notified us of an FMD outbreak in the northern Uruguayan department of Artigas and immediately prohibited the movement of all animals and animal products throughout the department. On November 20, 2000, Uruguay sent a team of veterinary officials to the United States to provide us with detailed information on the outbreak history, measures taken to eradicate the disease, movement controls, monitoring and surveillance, and other relevant activities. In an interim rule published in the **Federal Register** on December 13, 2000 (65 FR 77771–77773, Docket No. 00–111–1), and effective retroactively to October 1, 2000, we removed the Uruguayan department of Artigas from the list of regions considered to be free of rinderpest and FMD.

On April 24, 2001, FMD was clinically confirmed in the Uruguayan department of Soriano, near Uruguay's border with Argentina. The disease subsequently spread to additional departments. Uruguay's Ministry of Livestock, Agriculture and Fisheries notified the United States Department of Agriculture and the Office International des Epizooties that, as of August 21, 2001, there had been 2,057 confirmed cases of FMD in 18 departments of Uruguay, including Artigas and Soriano. In response to the outbreak, the Ministry of Livestock, Agriculture and Fisheries began a stamping out campaign on April 24, 2001, that continued until it was suspended on April 30, 2001. The government of Uruguay also issued a ban on the movement of all animals susceptible to FMD; began an emergency ring vaccination campaign on April 26, 2001; established a containment zone with strategic vaccination; applied strict sanitary measures within the outbreak areas; placed fixed control and disinfection posts on the main access routes to the affected areas; and suspended all export health certificates for ruminants and swine.

On July 13, 2001, we published in the **Federal Register** an interim rule (66 FR 36695–36697, Docket No. 00–111–2), effective retroactively to April 2, 2001, that amended the regulations by removing Uruguay from the list of regions considered free of rinderpest and FMD and from the list of regions that, although rinderpest and FMD-free, are subject to certain restrictions on the importation of meat and other animal products. That action was necessary because FMD had been confirmed in 18 departments of Uruguay. The effect of the interim rule was to prohibit or restrict the importation of any ruminants or swine and any fresh (chilled or frozen) meat and other products of ruminants or swine into the United States from Uruguay.

Although we removed Uruguay from the list of regions considered to be free of rinderpest and FMD, we recognized in the interim rule that Uruguay's Ministry of Livestock, Agriculture, and Fisheries responded immediately to the detection of the disease by imposing restrictions on the movement of ruminants, swine, and ruminant and swine products from the affected areas and by initiating measures to control and eradicate the disease. We also stated that we intended to reassess the situation to determine whether it was necessary to continue to prohibit or restrict the importation of ruminants or swine and any fresh (chilled or frozen) meat and other products of ruminants or swine from Uruguay.

Under the current regulations, the importation of fresh (chilled or frozen) beef from Uruguay is prohibited. Because Uruguay took immediate, effective measures to control and eradicate FMD after the initial outbreak; continues to employ control measures, including a vaccination program, movement controls (especially control of movement to slaughter), maturation, de-boning, ante- and post-mortem inspections, pH testing, and national and international border controls; and has not had a confirmed case of FMD in over a year, the government of Uruguay requested that APHIS consider allowing the export of fresh (chilled or frozen) beef to the United States.

In response to this request, APHIS prepared a risk assessment, which can be viewed on the Internet at *http://www.aphis.usda.gov/vs/ncie/reg-request.html.* To view the document, follow the link entitled, ''Information previously submitted by Regions requesting export approval and their supporting documentation.'' At the next screen, click on the triangle beside ''Uruguay/Animals and Animal Products/Foot-and-Mouth Disease,'' then on the triangle beside ''Response by APHIS.'' A link will then appear for ''Risk Assessment—Importation of Fresh (chilled or frozen) Beef from Uruguay (November 2002).'' Following that link will allow you to view the assessment. You may also request paper copies of this document by calling or writing the person listed under **FOR FURTHER INFORMATION CONTACT.** Please refer to Docket No. 02–109–1 when requesting copies. The risk assessment is also available in our reading room. (Information on the location and hours of the reading room may be found at the beginning of this document under **ADDRESSES.**) The risk assessment process also included a site visit in July 2002 during which a team of APHIS representatives reviewed Uruguay's animal health infrastructure, vaccination program, movement controls, slaughter procedures, and national and international border controls. (The site visit report is available along with the risk assessment as discussed above). Under the Animal Health Protection Act (7 U.S.C. 8301 *et seq.*), the Secretary of Agriculture may prohibit the importation of any animal or article if the Secretary determines that the prohibition is necessary to prevent the introduction into or dissemination within the United States of any pest or disease of livestock. Based on the risk assessment, the site visit, and information provided by the government of Uruguay, we have determined that it is not necessary to prohibit the importation of fresh (chilled or frozen) beef from Uruguay, provided certain stringent requirements are met.

On May 5, 2001, the government of Uruguay initiated the first round of a vaccination program. Four rounds have been completed to date, and one round of calf vaccinations for calves born between 2000 and 2001 was completed in November of 2001. The vaccination program will continue until May 2003, at which time the government of Uruguay plans to evaluate its vaccination policy. Although there has not been a confirmed case of FMD in Uruguay since August 21, 2001, this ongoing vaccination program makes additional mitigating measures necessary in order to ensure protection against the introduction of FMD into the United States from the importation of fresh (chilled or frozen) beef from Uruguay. When animals are vaccinated for FMD, it can be difficult to distinguish between serological responses that are caused by the FMD virus and responses that are caused by the vaccinations. Further, if the disease is present in a region, symptoms in a vaccinated animal can be suppressed and may not manifest themselves at a clinical level. To mitigate these additional risk factors, we are proposing to require the mitigating measures discussed below, which we have determined will protect against the introduction of FMD into the United States from the importation of fresh (chilled or frozen) beef from Uruguay.

Mitigation Measures

The proposed changes to the regulations include several additional conditions that would have to be met before importation of fresh (chilled or frozen) beef from Uruguay into the United States would be allowed. An authorized veterinary official of the government of Uruguay would have to certify that the following conditions have been met:

- The meat is beef from bovines that have been born, raised, and slaughtered in Uruguay;
- FMD has not been diagnosed in Uruguay within the previous 12 months;
- The beef came from bovines that originated from premises where FMD has not been present during the lifetime of any bovines slaughtered for the export of meat to the United States;
- The beef came from bovines that were moved directly from the premises of origin to the slaughtering establishment without any contact with other animals;
- The beef came from bovines that received ante- and post-mortem veterinary inspections, paying particular attention to the head and feet, at the slaughtering establishment, with no evidence found of vesicular disease;
- The beef consists only of bovine parts that are, by standard practice, part of the animal's carcass that is placed in a chiller for maturation after slaughter. Bovine parts that may not be imported include all parts of bovine heads, feet, hump, hooves, and internal organs;
- All bone and visually identifiable blood clots and lymphoid tissue have been removed from the beef;
- The beef has not been in contact with meat from regions other than those listed in § 94.1(a)(2); and
- The beef came from bovine carcasses that have been allowed to maturate at 40 to 50 °F (4 to 10 °C) for a minimum of 36 hours after slaughter and have reached a pH of 5.8 or less in the loin muscle at the end of the maturation period. Any carcass in which the pH does not reach 5.8 or less may be allowed to maturate an additional 24 hours and be retested, and, if the carcass still has not reached a pH of 5.8 or less after 60 hours, the meat from the carcass may not be exported to the United States.

In addition to these proposed requirements, § 94.21(l) of this proposed rule would also require the establishment in which the bovines are slaughtered to allow periodic on-site evaluation and subsequent inspection of its facilities, records, and operations by an APHIS representative.

Ante- and Post-Mortem Inspections

Among the proposed additional requirements that would have to be met for the importation of fresh (chilled or frozen) beef from Uruguay is the proposed requirement in § 94.21(e) of this proposed rule that the beef come from bovines that received ante-mortem and post-mortem veterinary inspections, paying particular attention to the head and feet, at the slaughtering establishment. Because FMD has a short incubation period, if animals were infected with FMD at a premises of origin, it is likely that lesions would be visible in at least a few of those animals at the slaughtering establishment prior to slaughter. Similarly, post-mortem inspection of carcasses would be likely to identify any lesions and vesicles in animals infected with FMD. Since the lesions associated with FMD occur primarily on the feet and in the mouth, particular attention must be paid to the head and feet during these inspections. Because ante- and post-mortem inspections are important in reducing disease risk, we are proposing explicit requirements for ante- and post-mortem inspections for bovines slaughtered for the export of fresh (chilled or frozen) beef from Uruguay to the United States.

Restrictions on Certain Bovine Parts

In this proposed rule, § 94.21(f) would provide that certain bovine parts would continue to be prohibited importation into the United States. Specifically, no part of the animal's head, feet, hump, hooves, or internal organs would be allowed entry into the United States. While portions of a bovine's head, feet, hump, hooves, and internal organs may reach the necessary pH level during the required maturation process (*see* ''Maturation Process''), these items can contain lymph tissue, depot fat, and blood clots that may potentially harbor FMD virus that is not inactivated. When we refer to fresh (chilled or frozen) beef in proposed § 94.21, we mean only the traditional cuts of meat obtained from a bovine's carcass.

Bone, Blood Clots, and Lymphoid Tissue

The proposed requirement in § 94.21(g) of this proposed rule states that all bone, blood clots, and lymphoid tissue must be removed from the beef that is to be exported from Uruguay to the United States. The removal of these parts is necessary because any FMD virus these parts might potentially harbor may not be inactivated by the maturation process described in the following paragraph. Although we consider the removal of these parts necessary, we recognize that meat may contain small portions of blood clots or lymphoid tissue that are not visually identifiable as such. Because such small parts are unlikely to harbor any FMD virus that is not inactivated by the maturation process, and because we recognize that it would be difficult, if not impossible, to remove parts of blood clots or lymphoid tissue that are not recognizable as such, we have specified in the proposed requirement that all bone and ''visually identifiable'' blood clots and lymphoid tissue be removed.

Maturation Process

Paragraph (i) of proposed § 94.21 provides that the beef must come from bovine carcasses that have been allowed to maturate at 40 to 50 °F (4 to 10 °C) for a minimum of 36 hours after slaughter and that have reached a pH of 5.8 or less in the loin muscle at the end of the maturation period. Any carcass in which the pH does not reach 5.8 or less may be allowed to maturate an additional 24 hours and be retested. This proposed provision goes on to state that if the meat does not meet this pH level after 60 hours, it may not be exported to the United States. This proposed requirement is based on the fact that the FMD virus in meat is inactivated by acidification, which occurs naturally during maturation. An acid environment of a pH of 5.8 or less destroys the virus quickly.

APHIS Inspection of Slaughtering Establishments

Although the proposed conditions in § 94.21 include a provision in paragraph (j) that an authorized veterinary official of the government of Uruguay certify that the required conditions for importation have been met, we are proposing an additional condition in paragraph (k) that would require establishments in which bovines are slaughtered to allow periodic APHIS inspection of their facilities, records, and operations. We continue to believe that, in the great majority of cases, certification by an authorized veterinary official of Uruguay will be sufficient verification. However, because of the possibility of occasional differing interpretations of the regulations, we consider it advisable to enable APHIS representatives to have access to slaughtering establishments for periodic inspections of the establishments and their records and operations.

Based on our assessment, and considering the effective control measures employed by the government of Uruguay after the initial outbreak and their ongoing control measures, we have determined that it is not necessary to prohibit the importation of fresh (chilled or frozen) beef from Uruguay, as long as the beef meets certain stringent conditions.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 1286 and, therefore, has not been reviewed by the Office of Management and Budget.

This proposed rule would amend the regulations governing the importation of certain animals, meat, and other animal products by allowing, under certain conditions, the importation of fresh (chilled or frozen) beef from Uruguay. Based on the evidence documented in our recent risk assessment, we believe that fresh (chilled or frozen) beef can be safely imported from Uruguay provided certain conditions are met. This action would provide for the importation of beef from Uruguay into the United States while continuing to protect the United States against the introduction of FMD.

This proposed rule would reopen the U.S. market to Uruguayan beef producers. Beef producers and importers in the United States should not experience any notable economic effects as a result of these proposed changes because the United States has imported only a small amount of beef from Uruguay in the past (Table 1).

TABLE 1.—VALUE OF U.S. SUPPLY AND IMPORTS OF FRESH (CHILLED OR FROZEN) BEEF AND URUGUAY'S SHARE

	U.S. imports from Uruguay	Total U.S. imports		U.S. supply (domestic production + imports − exports)	
	(in millions of dollars)	(in millions of dollars)	Uruguay's share (in percent)	(in millions of dollars)	Uruguay's share (in percent)
1997	37.5	1,407.9	2.7	22,941	0.2
1998	29.2	1,609.8	1.8	23,184	0.1
1999	43.5	1,907.7	2.3	23,846	0.2
2000	40.9	2,221.0	1.8	24,000	0.2

Sources: Imports and Exports: U.S. Department of Commerce, Bureau of the Census, as reported by the World Trade Atlas. Domestic production: Calculated from quantities reported in Table 7–72 of Agricultural Statistics 2000, with a wholesale price for the 3 years conservatively approximated at $90 per hundredweight.

Uruguay's share in the value of U.S. imports of fresh (chilled or frozen) beef has been very small. From 1997 to 2000, Uruguayan exports accounted for only 1.8 to 2.7 percent of total U.S. imports of fresh (chilled or frozen) beef. During the same period, imports from Uruguay accounted for 0.2 percent or less of the value of the U.S. supply (domestic production plus imports minus exports) of fresh (chilled or frozen) beef.

Impact on Small Entities

According to the Small Business Administration's (SBA) size classification, beef cattle ranches and farms having $750,000 or less in annual revenues, and cattle feedlots having $1,500,000 or less in annual revenues are considered small entities. The number of farms and ranches with beef herds in the United States in 1997 was reported to be 766,991, and 99.8 percent of these beef farms could be categorized as small according to the SBA's criteria.[1]

It is impossible to determine from published data how many U.S. cattle feedlots could be categorized as small according to the SBA's criteria. Industry analysts suggest that feedlots with a capacity of roughly 1,000 head of cattle would have annual revenues of approximately $1,500,000. In 2000, roughly 18 percent (2,508) of cattle feedlots in the United States would have been considered small by SBA standards.[2]

Although this proposed rule could potentially affect a large number of small beef farms and a relatively small number of small feedlots by allowing Uruguayan beef into the U.S. market, it is not expected to have a significant economic effect on these entities because the import volumes involved are low.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings

[1] USDA, National Agricultural Statistics Service, 1997, Census of Agriculture—United States Data, table 28, page 32.

[2] Unpublished National Agriculture Statistics Service data, from *Changes in the U.S. Feedlot Industry 1994–1999,* USDA/APHIS/NAHMS, August 2000.

will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This proposed rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 94

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry and poultry products, Reporting and recordkeeping requirements.

Accordingly, we are proposing to amend 9 CFR part 94 as follows:

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), EXOTIC NEWCASTLE DISEASE, AFRICAN SWINE FEVER, HOG CHOLERA, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS

1. The authority citation for part 94 would continue to read as follows:

Authority: 7 U.S.C. 450, 7701–7772, and 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 42 U.S.C. 4331 and 4332; 7 CFR 2.22, 2.80, and 371.4.

2. In § 94.1, a new paragraph (b)(4) would be added to read as follows:

§ 94.1 Regions where rinderpest or foot-and-mouth disease exists; importations prohibited.

* * * * *

(b) * * *

(4) Except as provided in § 94.21 for fresh (chilled or frozen) beef from Uruguay.

* * * * *

3. A new § 94.21 would be added to read as follows:

§ 94.21 Restrictions on importation of beef from Uruguay.

Notwithstanding any other provisions of this part, fresh (chilled or frozen) beef from Uruguay may be exported to the United States under the following conditions:

(a) The meat is beef from bovines that have been born, raised, and slaughtered in Uruguay.

(b) Foot-and-mouth disease has not been diagnosed in Uruguay within the previous 12 months.

(c) The beef came from bovines that originated from premises where foot-and-mouth disease has not been present during the lifetime of any bovines slaughtered for the export of beef to the United States.

(d) The beef came from bovines that were moved directly from the premises of origin to the slaughtering establishment without any contact with other animals.

(e) The beef came from bovines that received ante-mortem and post-mortem veterinary inspections, paying particular attention to the head and feet, at the slaughtering establishment, with no evidence found of vesicular disease.

(f) The beef consists only of bovine parts that are, by standard practice, part of the animal's carcass that is placed in a chiller for maturation after slaughter. Bovine parts that may not be imported include all parts of bovine heads, feet, hump, hooves, and internal organs.

(g) All bone and visually identifiable blood clots and lymphoid tissue have been removed from the beef.

(h) The beef has not been in contact with meat from regions other than those listed in § 94.1(a)(2).

(i) The beef came from bovine carcasses that were allowed to maturate at 40 to 50° F (4 to 10° C) for a minimum of 36 hours after slaughter and that reached a pH of 5.8 or less in the loin muscle at the end of the maturation period. Any carcass in which the pH does not reach 5.8 or less may be allowed to maturate an additional 24 hours and be retested, and, if the carcass still has not reached a pH of 5.8 or less after 60 hours, the meat from the carcass may not be exported to the United States.

(j) An authorized veterinary official of the Government of Uruguay certifies on the foreign meat inspection certificate that the above conditions have been met.

(k) The establishment in which the bovines are slaughtered allows periodic on-site evaluation and subsequent inspection of its facilities, records, and operations by an APHIS representative.

Done in Washington, DC, this 5th day of February, 2003.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 03–3228 Filed 2–7–03; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–14348; Airspace Docket No. 03–ACE–5]

Proposed Establishment of Class E Surface Area Airspace; and Modification of Class D Airspace; Topeka, Forbes Field, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to create a Class E surface area at Topeka, Forbes Field, KS for those times when the air traffic control tower (ATCT) is closed. It also proposes to modify the Class D airspace at Topeka, Forbes Field, KS.

DATES: Comments for inclusion in the Rules Docket must be received on or before March 25, 2003.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2003–14348/Airspace Docket No. 03–ACE–5, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2525.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in tiplicate to the address listed above. Comments wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: Comments to Docket No. FAA–2003–14348/Airspace Docket No. 03–ACE–5.'' The postcard will be date/time stamped and returned to the commenter.

Availability of NPRM's

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov* or the Superintendent of Document's Web page at *http://www.access.gpo.gov/nara.*

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR Part 71) by establishing Class E airspace designated as a surface area for an airport at Topkea, Forbes Field, KS. Controlled airspace extending upward from the surface of the earth is needed to contain aircraft executing instruments approach procedures. This airspace would be in effect during those times when the ATCT is closed. Weather observations would be provided by an Automated Surface Observing System (ASOS) and communications would be through the Wichita Automated Flight Service Station. The area would be depicted on appropriate aeronautical charts. The FAA is also considering modifying Class D airspace at Topeka, Forbes Field, KS. An examination of the Class D airspace for Topeka, Forbes Field, KS has revealed a discrepancy in the airport reference point used for the Class D airspace legal description. This proposal would correct that discrepancy by incorporating the current airport reference point in the Class D airspace for Topeka, Forbes Field, KS.

Class E airspace areas designed as surface areas are published in Paragraph 6002 of FAA Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1 Class D airspace areas are published in Paragraph 5000 of the same FAA Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9K, Airspace Designations and Reporting Points, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

Paragraph 6002 Class E Airspace Designated as Surface Areas.

* * * * *

ACE KS E2—Topeka, Forbes Field, KS

Topeka, Forbes Field, KS

(Lat. 38°57′03″ N., long. 95°39′49″ W.)

Within a 4.6-mile radius of Forbes Field. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 5000 Class D Airspace.

* * * * *

ACE KS D—Topeka, Forbes Field, KS

Topeka, Forbes Field, KS

(Lat. 38°57′03″ N., long. 95°39′49″ W.)

That airspace extending upward from the surface to and including 3,600 feet MSL within a 4.6-mile radius of Forbes Field. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Kansas City, MO, on January 27, 2003.

Herman J. Lyons, Jr.

Manager, Air Traffic Division, Central Region.

[FR Doc. 03–3267 Filed 2–7–03; 8:45 am]

BILLING CODE 4910–13–M

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 201

[Docket No. RM 2002–4A]

Exemption to Prohibition on Circumvention of Copyright Protection Systems for Access Control Technologies

AGENCY: Copyright Office, Library of Congress.

ACTION: Notice of inquiry.

SUMMARY: The Copyright Office of the Library of Congress has granted a petition by Static Control Components, Inc. to consider a newly-proposed class of works to be exempted from the prohibition on circumvention of technological measures that control access to copyrighted works as part of a pending rulemaking pursuant to the Digital Millennium Copyright Act. The Office has posted Static Control's comment in support of the proposed exemption on its website and seeks reply comments on the proposed exemption.

DATES: Reply comments must be received by the Copyright Office General Counsel no later than 5 pm Eastern Standard Time on March 10, 2003.

ADDRESSES: Electronic Internet submissions must be made through the Copyright Office Web site at *http://www.copyright.gov/1201/comment_forms. See* Exemption to Prohibition on Circumvention of Copyright Protection Systems for Access Control Technologies, 67 FR 63578, 63582 (October 15, 2002), for file formats and other information about electronic and non-electronic filing requirements. If delivered by hand, comments should be delivered to the Office of the General Counsel, Copyright

Office, LM–403, James Madison Memorial Building, 101 Independence Avenue, SE., Washington, DC. If delivered by means of the United States Postal Service, comments should be addressed to David O. Carson, General Counsel, Copyright GC/I&R, PO Box 70400, Southwest Station, Washington, DC 20024–0400.

FOR FURTHER INFORMATION CONTACT: Rob Kasunic, Office of the General Counsel, Copyright GC/I&R, PO Box 70400, Southwest Station, Washington, DC 20024–0400. Telephone (202) 707–8380; telefax (202) 707–8366.

SUPPLEMENTARY INFORMATION: The Copyright Office of the Library of Congress is currently conducting proceedings mandated by the Digital Millennium Copyright Act, which provides that the Librarian of Congress may exempt certain classes of works from the prohibition against circumvention of technological measures that control access to copyrighted works. *See* 17 U.S.C. 1201(a)(1)(C). The purpose of this rulemaking proceeding is to determine whether there are particular classes of works as to which users are, or are likely to be, adversely affected in their ability to make noninfringing uses due to the prohibition on circumvention. If there are, the Librarian may exempt such classes from the statutory prohibition.

Comments proposing classes of works to be exempted were due December 18, 2002. However, in order to provide flexibility in this rulemaking proceeding and to take into account unforeseen developments that might significantly affect the recommendation of the Register of Copyrights, the Office's October 15, 2002 Notice of Inquiry provided an opportunity to petition the Register for consideration of new information that could not reasonably have been known prior to the December 18 deadline. *See* Exemption to Prohibition on Circumvention of Copyright Protection Systems for Access Control Technologies, 67 FR 63578, 63582 (October 15, 2002). The Notice of Inquiry states that a petition to consider new classes of works proposed for exemption must be in writing and must set forth the reasons why the information could not have been made available earlier and why it should be considered by the Register after the deadline. A petition must also set forth the proposed class or classes of works to be exempted, a summary of the argument, the factual basis for such an exemption and the legal argument supporting such an exemption. The Register's determination whether to accept such a petition is based on the stage of the rulemaking process at which the request is made and the merits of the petition.

Static Control Components, Inc. (''Static Control'') has petitioned for consideration of the following classes of works:

1. Computer programs embedded in computer printers and toner cartridges and that control the interoperation and functions of the printer and toner cartridge;

2. Computer programs embedded in a machine or product and which cannot be copied during the ordinary operation or use of the machine or product; and

3. Computer programs embedded in a machine or product and that control the operation of a machine or product connected thereto, but that do not otherwise control the performance, display or reproduction of copyrighted works that have an independent economic significance.

The Register of Copyrights has determined that Static Control has adequately explained why the information set forth in its petition could not have been made available earlier, and that Static Control has set forth sufficiently serious arguments on the merits to warrant consideration of its proposal after the initial deadline. Accordingly, the ''Petition of Static Control Components, Inc. for Consideration of New Information'' has been accepted as a comment proposing three classes of works to be exempted from the prohibition on circumvention, and interested parties are invited to submit reply comments responsive to this comment, either in support of or opposition to the Static Control proposal. Static Control's comment is available on the Copyright Office Web site at *http://www.copyright.gov/1201/2003/petitions/*.

Reply comments responsive to this new comment will be accepted from February 24, 2003 until March 10, 2003, at 5 pm Eastern Standard Time. Commenters are encouraged to file their comments electronically. *See* **ADDRESSES**, above. Please review the initial Notice of Inquiry for format requirements for comments. *See* 67 FR at 63582 (October 15, 2002).

Dated: February 5, 2003.

David O. Carson,

General Counsel, Copyright Office.

[FR Doc. 03–3256 Filed 2–7–03; 8:45 am]

BILLING CODE 1410–30–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AL36

Presumption of Service Connection for Cirrhosis of the Liver in Former Prisoners of War

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) proposes to amend its adjudication regulations concerning presumptive service connection for certain diseases. The proposed amendment would add cirrhosis of the liver to the list of diseases for which entitlement to service connection is presumed for former prisoners of war (POWs). The intended effect is to make it easier for former POWs to obtain compensation for cirrhosis based on scientific and medical research showing a significantly higher risk of death from cirrhosis in former World War II POWs than in the general population.

DATES: Comments must be received on or before April 11, 2003.

ADDRESSES: Mail or hand deliver written comments to: Director, Office of Regulations Management (02D), Room 1154, 810 Vermont Ave., NW., Washington, DC 20420; or fax comments to (202) 273–9289; or e-mail comments to *OGCRegulations@mail.va.gov*. Comments should indicate that they are submitted in response to ''RIN 2900–AL36.'' All comments received will be available for public inspection in the Office of Regulations Management, Room 1158, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays).

FOR FURTHER INFORMATION CONTACT: Beth McCoy, Consultant, Regulations Staff, Compensation and Pension Service (211A), Veterans Benefits Administration, Department of Veterans Affairs, 111 W. Huron Street, Room 22, Buffalo, NY 14202, (716) 551–4842.

SUPPLEMENTARY INFORMATION: Section 1112(b) of title 38, United States Code, designates 15 diseases considered to have been incurred in or aggravated during active duty service by former POWs detained or interned for at least 30 days, even though there is no record of such diseases during the period of service. Each listed disease must have become manifest to a degree of 10 percent or more after active duty service. VA implemented the provisions of 38 U.S.C. 1112(b) at 38 CFR 3.309(c). Former POWs are entitled to service connection for any of the 15 listed diseases, even though there is no record of the disease during service, if it becomes manifest to a degree of 10 percent or more any time after discharge from active military, naval, or air service.

Presumptions of service connection under § 3.309 (c) are rebuttable under the provisions of § 3.307(d), which states that the presumption of service connection for a disease under § 3.309 may be rebutted by competent evidence. The presumption of service connection may be rebutted with affirmative evidence that the disease was not incurred in service based on sound medical reasoning and consideration of all evidence of record.

In October 2000, the Institute of Medicine (IOM) published results of a study that found a significantly higher risk of cirrhosis among former World War II POWs compared with control groups. POWs held in the Pacific and European theaters had roughly 1.5 times the risk of death due to cirrhosis compared to non-POW controls. (Page WF, Miller R: Cirrhosis Mortality among Former American Prisoners of War of World War II and the Korean Conflict: Results of a 50-year Follow-up. Military Medicine 2000; 165: 781–785.) Cirrhosis mortality was not found to be associated with any differences in levels of alcohol consumption among World War II and Korean POWs and Korean controls, which were similar to those among U.S. males. Therefore, it appears that alcohol consumption does not provide an explanation for the higher mortality rates identified in POWs.

IOM initially conducted a 30-year follow-up of American POWs of World War II and the Korean Conflict. (Nefzger MD: Follow-up of World War II and Korean prisoners. I. Study plan and mortality findings. Am J Epidemiology 1970; 91: 123–38.) Sampling began in the early 1950s of three groups of POWs (WWII Pacific theater prisoners, WWII European theater prisoners, and Korean conflict prisoners) along with sampling of non-POW military veteran controls. In the 30-year study, IOM found evidence of increased mortality from cirrhosis in American former POWs compared to the U.S. general population.

In the 2000 IOM study, the authors used federal records, primarily from VA and the Social Security Administration, to extend the follow-up to 50 years with similar results. Cirrhosis Mortality, 165 Military Medicine at 781. By crosschecking federal records, they estimate that their mortality statistics are 99.6 percent complete. *Id.* Furthermore, the design of their study not only allowed them to compare World War II and Korean POW mortality with that of the U.S. general population, but also permitted a direct comparison of POW mortality with that of non-POW military veteran controls. *Id.* at 782. The purpose was to avoid biases inherent in a general population comparison attributable to the general fitness of military veterans. *Id.*

The results of the 2000 IOM study are consistent with earlier studies. In 1999, a mortality follow-up of POWs held in the Far East found that British POWs had a higher mortality rate from diseases of the liver, including chronic liver disease and cirrhosis, than the general population. (Gale CR, Braidwood EA, Winter PD, Martyn CN: Mortality from Parkinson's disease and other causes in men who were prisoners of war in the Far East. Lancet 1999; 354: 2116–8.) Also, a 1968 mortality study of Australian World War II POWs taken prisoner after the fall of Singapore revealed twice as many deaths from cirrhosis as those expected during the period from 1951 to 1963. (Freed G, Stringer PB: Comparative Mortality Experience 1946–1963 among Australian prisoners of war of the Japanese. Aust Repat Med Dept Bull 1968; 150: 378–382.)

The Secretary believes that the research cited above constitutes sound scientific evidence supporting the conclusion that an association exists between cirrhosis and POW status. The 2000 IOM study indicates a "significantly higher risk of cirrhosis" for World War II POWs only; however, World War II POWs comprise 93 percent of the estimated 46,417 living POWs from the last five conflicts in which the United States was involved. The Secretary has therefore determined that it is appropriate to add cirrhosis of the liver to the list of diseases in § 3.309(c) for which VA presumes service connection in all former POWs interned or detained for at least 30 days.

Unfunded Mandates

The Unfunded Mandates Reform Act requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector of $100 million or more in any given year. This rule would have no consequential effect on State, local, or tribal governments.

Paperwork Reduction Act

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3521).

Executive Order 12866

This regulatory amendment has been reviewed by the Office of Management and Budget under the provisions of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993.

Regulatory Flexibility Act

The Secretary hereby certifies that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. The reason for this certification is that this amendment would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

The Catalog of Federal Domestic Assistance number is 64.109.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Disability benefits, Health care, Pensions, Veterans, Vietnam.

Approved: November 12, 2002.

Anthony J. Principi,

Secretary of Veterans Affairs.

For the reasons set forth in the preamble, VA proposes to amend 38 CFR part 3 as follows:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

1. The authority citation for Part 3 continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

§3.309 [Amended]

2. Section 3.309(c) is amended by adding "Cirrhosis of the liver." following "Peripheral neuropathy except where directly related to infectious causes." and before the explanatory note.

[FR Doc. 03–3175 Filed 2–7–03; 8:45 am]

BILLING CODE 8320–01–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[WV049–6024b; FRL–7442–2]

Approval and Promulgation of Air Quality Implementation Plans; West Virginia; Regulation To Prevent and Control Air Pollution From Combustion of Refuse

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the State of West Virginia for the purpose of establishing regulations for the prevention and control of air pollution from the open burning and incineration of refuse. In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A more detailed description of the state submittal and EPA's evaluation are included in a Technical Support Document (TSD) prepared in support of this rulemaking action. A copy of the TSD is available, upon request, from the EPA Regional Office listed in the **ADDRESSES** section of this document. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by March 12, 2003.

ADDRESSES: Written comments should be addressed to Kathleen Anderson, Air Quality Planning and Information Branch , Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; West Virginia Department of Environmental Protection, Division of Air Quality, 7012 MacCorkle Avenue, SE., Charleston, WV 25304–2943.

FOR FURTHER INFORMATION CONTACT: Kathleen Anderson, (215) 814–2173, or by e-mail at *anderson.kathleen@epa.gov.* Please note that while questions may be posed via telephone and e-mail, formal comments must be submitted in writing, as indicated in the **ADDRESSES** section of this document.

SUPPLEMENTARY INFORMATION: For further information, please see the information provided in the direct final action, with the same title, that is located in the ''Rules and Regulations'' section of this **Federal Register** publication.

Dated: January 15, 2003.

James W. Newsom,

Acting Regional Administrator, Region III.

[FR Doc. 03–2939 Filed 2–7–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[NH–50–7174b; FRL–7447–8]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants: New Hampshire; Plan for Controlling Emissions From Existing Commercial and Industrial Solid Waste Incinerators

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The United States Environmental Protection Agency (EPA) proposes to approve the sections 111(d)/129 State Plan submitted by the New Hampshire Department of Environmental Services (DES) on August 12, 2002. This State Plan is for carrying out and enforcing provisions that are at least as protective as the Emissions Guidelines (EG) applicable to certain existing Commercial and Industrial Solid Waste Incinerators (CISWIs) in accordance with sections 111 and 129 of the Clean Air Act.

The New Hampshire DES submitted the Plan to satisfy certain Federal Clean Air Act requirements. In the Final Rules section of the **Federal Register**, EPA is approving the New Hampshire State Plan submittal as a direct final rule without a prior proposal. EPA is doing this because the Agency views this action as a noncontroversial submittal and anticipates that it will not receive any significant, material, and adverse comments. A detailed rationale for the approval is set forth in the direct final rule and incorporated herein. If EPA does not receive any significant, material, and adverse comments to the direct final rule, then the approval will become final without further proceedings. If EPA receives adverse comments, the direct final rule will be withdrawn and EPA will address all public comments received in a subsequent final rule based on this proposed rule. EPA will not begin a second comment period.

DATES: EPA must receive comments on this proposed rule in writing by March 12, 2003.

ADDRESSES: You should address your written comments to: Mr. Steven Rapp, Chief, Air Permits, Toxics & Indoor Programs Unit, Office of Ecosystem Protection, U.S. EPA, One Congress Street, Suite 1100 (CAP), Boston, Massachusetts 02114–2023.

Copies of documents relating to this proposed rule are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the day of the visit.

Environmental Protection Agency, Air Permits, Toxics & Indoor Programs Unit, Office of Ecosystem Protection, Suite 1100 (CAP), One Congress Street, Boston, Massachusetts 02114–2023.

New Hampshire Department of Environmental Services, Air Resources Division, 6 Hazen Drive, P.O. Box 95, Concord, New Hampshire 03301–0095, (603) 271–1370.

FOR FURTHER INFORMATION CONTACT: John Courcier, Office of Ecosystem Protection (CAP), EPA-New England, Region 1, Boston, Massachusetts 02203, (617) 918–1659, or by e-mail at *courcier.john@epa.gov.* While the public may forward questions to EPA via e-mail, it must submit comments on this proposed rule according to the procedures outlined above.

SUPPLEMENTARY INFORMATION: See the information provided in the Direct Final action of the same title which is found in the Rules section of this **Federal Register**.

Dated: January 23, 2003.

Robert W. Varney,

Regional Administrator, EPA New England.

[FR Doc. 03–2541 Filed 2–7–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[NH–51–7175b; FRL–7447–5]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants: New Hampshire; Plan for Controlling MWC Emissions From Existing Municipal Waste Combustors

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) proposes to approve the sections 111(d)/129 State Plan submitted by the New Hampshire Department of Environmental Services (DES) on August 12, 2002. This State Plan is for carrying out and enforcing provisions that are at least as protective as the Emissions Guidelines (EG) applicable to certain existing large and small Municipal Waste Combustion (MWC) units in accordance with sections 111 and 129 of the Clean Air Act. The New Hampshire DES submitted the Plan to satisfy certain Federal Clean Air Act requirements. In the Final Rules section of the **Federal Register**, EPA is approving the New Hampshire State Plan submittal as a direct final rule without a prior proposal. EPA is doing this because the Agency views this action as a noncontroversial submittal and anticipates that it will not receive any significant, material, and adverse comments. A detailed rationale for the approval is set forth in the direct final rule and incorporated by reference herein. If EPA does not receive any significant, material, and adverse comments to this proposed rule, then the approval will become final without further proceedings. If EPA receives adverse comments, the direct final rule will be withdrawn and EPA will address all public comments received in a subsequent final rule based on this proposed rule. EPA will not begin a second comment period.

DATES: EPA must receive comments on this proposed rule in writing by March 12, 2003.

ADDRESSES: You should address your written comments to: Mr. Steven Rapp, Chief, Air Permits, Toxics & Indoor Programs Unit, Office of Ecosystem Protection, U.S. EPA, One Congress Street, Suite 1100 (CAP), Boston, Massachusetts 02114–2023.

Copies of documents relating to this proposed rule are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the day of the visit.

Environmental Protection Agency, Air Permits, Toxics & Indoor Programs Unit, Office of Ecosystem Protection, Suite 1100 (CAP), One Congress Street, Boston, Massachusetts 02114–2023.

New Hampshire Department of Environmental Services, Air Resources Division, 6 Hazen Drive, P.O. Box 95, Concord, New Hampshire 03301–0095, (603) 271–1370.

FOR FURTHER INFORMATION CONTACT: John Courcier, Office of Ecosystem Protection (CAP), EPA-New England, Region 1, Boston, Massachusetts 02203, (617) 918–1659, or by e-mail at *courcier.john@epa.gov*. While the public may forward questions to EPA via e-mail, it must submit comments on this proposed rule according to the procedures outlined above.

SUPPLEMENTARY INFORMATION: See the information provided in the Direct Final action of the same title which is found in the Rules section of this **Federal Register**.

Dated: January 23, 2003.

Robert W. Varney,

Regional Administrator, EPA New England.

[FR Doc. 03–2940 Filed 2–7–03; 8:45 am]

BILLING CODE 6560–50–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 413

[CMS–1126–P]

RIN 0938–AK02

Medicare Program; Provider Bad Debt Payment

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule would remove the cap on allowable Medicare bad debt for end-stage renal disease (ESRD) facilities and expand the application of a 30 percent reduction in bad debt reimbursement for hospitals to other Medicare providers or entities currently eligible to receive bad debt reimbursement. In addition, this proposed rule would clarify that bad debts are not allowable for entities paid under reasonable-charge or fee schedule methodologies. The goal of this proposal, with respect to bad debt payment, is to achieve a consistent bad debt reimbursement policy for hospitals and other providers or entities currently eligible to receive payments from Medicare for bad debt.

DATES: We will consider comments if we receive them at the appropriate address, as provided below, no later than 5 p.m. on April 11, 2003.

ADDRESSES: In commenting, please refer to file code CMS–1126–P. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission. Mail written comments (one original and three copies) to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services,Attention: CMS–1126–P, PO Box 8017, Baltimore, MD 21244–8017.

Please allow sufficient time for mailed comments to be timely received in the event of delivery delays.

If you prefer, you may deliver (by hand or courier) your written comments (one original and three copies) to one of the following addresses: Room 443–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, or Room C5–14–03, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and could be considered late.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Katie Walker, (410) 786–7278.

SUPPLEMENTARY INFORMATION: *Inspection of Public Comments:* Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone (410) 786–7195 or (410) 786–7201. We must be contacted at least 72 hours in advance.

Copies: To order copies of the **Federal Register** containing this document, send your request to: New Orders, Superintendent of Documents, PO Box 371954, Pittsburgh, PA 15250–7954. Specify the date of the issue requested and enclose a check or money order payable to the Superintendent of Documents, or enclose your Visa or Master Card number and expiration date. Credit card orders can also be placed by calling the order desk at (202) 512–1800 (or toll-free at 1–888–293–6498) or by faxing to (202) 512–2250. The cost for each copy is $10. As an alternative, you can view and photocopy the **Federal Register** document at most libraries designated as Federal Depository Libraries and at many other public and academic libraries throughout the country that receive the **Federal Register**.

This **Federal Register** document is also available from the **Federal Register** online database through GPO Access, a service of the U.S. Government Printing Office. The Web site address is: *http://www.access.gpo.gov/nara/index.html*.

I. Background

A. Bad Debt Reimbursement

In 1966, the Health Insurance Benefits Advisory Committee (HIBAC) (authorized by section 1867 of the Social Security Act, repealed 1984) recommended that Medicare cover the unpaid deductible and coinsurance amounts that arose in connection with the provision of covered services to beneficiaries (herein referred to as Medicare bad debt). This recommendation was meant to avoid cross-subsidization that might occur if hospitals or other entities tried to recoup Medicare bad debt from other payers. The HIBAC believed that under the statute, the Congress had intended to avoid cross-subsidization by meeting the cost of the bad debts that accrued to a provider where these amounts were otherwise uncollectible. The reasoning behind this view flowed from section 1861(v)(1)(A)(i) of the Act, which states that the costs for individuals covered by the Medicare program must not be borne by individuals not covered by the program, and the costs for individuals not covered by the program must not be borne by Medicare. We refer to this statutory provision as the prohibition on cross-subsidization. The Secretary agreed with the HIBAC recommendation and the bad debt policy was adopted in 1966. This anti-cross subsidization principle is now part of the definition of ‘‘reasonable cost’’ as defined in section 1861(v) of the Act.

Under section 2145 of the Omnibus Budget Reconciliation Act (OBRA) of 1981 (Pub. L. 97–35), the Congress mandated a prospective payment system (PPS) for paying providers of various services covered by Medicare. Hospitals became the first provider-type to receive Medicare reimbursement under this law with the establishment of a PPS for inpatient hospital services in 1983. PPS replaced the retrospective cost-based reimbursement methodology previously in effect. Under this reimbursement system, Medicare payment for Part A inpatient operating costs is made on the basis of a prospectively determined rate per type of discharge, as determined by the classification of each patient case into a diagnosis-related group (DRG).

Shortly after implementation of PPS, in a Priority Audit Memorandum dated July 9, 1985, the Office of Inspector General (OIG) recommended that, in light of this new payment system, we should discontinue the reimbursement of inpatient hospital bad debts. After a thorough evaluation, we rejected the OIG's recommendation to discontinue paying bad debt for hospitals, concluding that the payments continued to be appropriate for the reasons discussed below. We also evaluated and rejected a second option suggested by the OIG to include a bad debt component in the DRG rates. We decided that this proposal would limit a hospital's incentive to collect the deductible and coinsurance amounts from the beneficiary and would address only the inpatient side. We also felt that because every facility incurred varying amounts of bad debt, the inclusion of bad debt in the DRG rates would be inequitable.

Therefore, in accordance with our regulations, we have continued to recognize bad debt for entities receiving payment under a PPS, such as for inpatient hospital services (42 CFR 412.115(a)), where Medicare payment policy, before PPS, recognized payment of those bad debts and where the prospective payments were derived from costs that did not reflect base period Medicare bad debts. That is, the prospective rates used to reimburse entities for services furnished to Medicare patients have basis in cost and are calculated using cost data reported by the entities on a base year cost report. They are then updated for inflation to the year in which payments are to be made. However, the bad debts incurred during that base period were not included in the calculation of the prospective rates. The bad debts for these entities are claimed at the end of each fiscal year, and allowable amounts are reimbursed separately.

Entities currently eligible to receive bad debt payments include hospitals, skilled nursing facilities (SNFs), critical access hospitals, rural health clinics, end-stage renal disease (ESRD) facilities, federally qualified health clinics, community mental health clinics, health maintenance organizations (HMOs) reimbursed on a cost basis, competitive medical plans (CMPs) and health care pre-payment plans.

The general bad debt policy is set forth in regulations at § 413.80 and the Provider Reimbursement Manual (PRM) (CMS Pub. 1501), Part 1, Chapter 3). Bad debt policy for ESRD Facilities is set forth in a separate regulation at § 413.178 and is further discussed below.

B. Reasonable Charge/Fee Schedules

The concept of Medicare bad debt payments applies only to services reimbursed on the basis of reasonable cost. Medicare has never made payments to account for bad debts for services paid under a fee schedule or reasonable charge methodology, such as services of physicians or suppliers. Under a fee schedule or reasonable charge methodology, Medicare reimbursement is not based on costs and, therefore, the concept of unrecovered costs is not relevant. Fee schedules, which are either charge-based or resource-based, relate payments to the price the entity charges. Historically, these prices have reflected the entities cost of doing business, including expenses such as bad debt.

C. End-Stage Renal Disease Bad Debt Reimbursement

Medicare pays ESRD facilities a prospectively determined composite rate. Under the payment rules authorized by sections 1881(b)(2) and (b)(7) of the Act as amended by OBRA of 1981, we pay 80 percent of a prospectively set rate for outpatient dialysis services. The Medicare beneficiary is responsible for the remaining 20 percent as a copayment, as well as any applicable deductible amounts set forth in § 413.176. If the ESRD facility makes reasonable collection efforts, as described in the PRM (CMS, pub. 15–1) Part I, (Section 310) but is unable to collect the coinsurance or deductible, we consider the uncollected amount to be a ‘‘bad debt’’ as described in §§ 413.178(b) and 413.80(b)(1) and (e).

At the end of the year, Medicare recognizes a facility's Medicare bad debts. However, under our current regulations, bad debt payments are capped so that total Medicare reimbursement (composite rate plus bad debt payments) does not exceed the total cost to serve Medicare patients.

Although section 1881 of the Act does not require Medicare to pay for an ESRD facility's Medicare bad debt, Medicare for many years (before the composite payment rate system) paid hospital-based ESRD facilities for their Medicare bad debts, as it has long paid Medicare bad debts of other types of providers or entities that were paid on a reasonable-cost basis. By contrast, ''free-standing'' or independent ESRD facilities were paid on a reasonable charge basis and were expected to absorb any Medicare bad debt as part of that charge. When we developed the composite payment rate system, which is used to pay both hospital-based and free-standing ESRD facilities, we based payment on the results of audits of ESRD facilities' reported costs, exclusive of Medicare bad debts. For this reason, we decided it was appropriate to separately recognize these bad debts at the end of the facility's fiscal year. Under the authority granted us in section 1881(b)(7) of the Act, we considered two options for paying these bad debts. One option was to include the bad debt allowance in the calculation of the composite rate. The other option was to reimburse an ESRD facility's bad debts in a special payment at the end of the facility's cost accounting period. We decided that this latter option was preferable because it would allow us to pay each facility the exact amount of its allowable bad debts. We concluded that, under the statute, we could pay an ESRD facility for its bad debts incurred from providing services to Medicare beneficiaries, and thereby avoid indirectly passing on these bad debts to individuals not covered by Medicare. Similarly, we determined that it would be appropriate to cap the total bad debt payment at a facility's unrecovered costs. In this way, the combination of the composite rate payments and our payment, if any, for Medicare bad debts would not exceed the facility's total allowable cost of providing services to Medicare beneficiaries.

In 1994, a group of providers of outpatient renal dialysis services challenged our regulation at § 413.178(a), which caps reimbursement for an ESRD facility's bad debt at costs. The plaintiffs argued, among other things, that we had provided inadequate justification for the reimbursement cap and were unable to demonstrate that the cap was consistent with the statute, as required by the Administrative Procedure Act (APA) (5 U.S.C., 706(2)(A)). The U.S. District Court for the District of Columbia upheld our regulation as an acceptable exercise of our discretion under the APA. On appeal, however, the D.C. Circuit Court overturned the District Court's ruling and found that our explanation, relying on the statutory provisions relating to cross-subsidization discussed above, was inadequate justification for the rule and inconsistent with a prospective rate scheme (*Kidney Center of Hollywood et al.* v. *Shalala,* 133 F.3d 78,88 (D.C. Circuit 1998)). The Circuit Court ordered that the final rule be vacated and remanded the case to us with the instruction that we either more adequately justify the rule or jettison it altogether.

D. Legislation Affecting Bad Debt Reimbursement for Hospitals

1. Omnibus Reconciliation Act of 1987

In 1987, the Congress enacted section 4008(c) of the OBRA of 1987 and later amended it in sections 8402 of the Technical and Miscellaneous Revenue Act of 1988 and section 6023 of OBRA of 1989. The provision, as amended, prohibits us from making ''any change in the policy in effect on August 1, 1987, regarding reimbursement to hospitals for Medicare bad debts.'' This legislation is collectively referred to as the moratorium on changes to the Medicare bad debt policy for hospitals. Since its enactment, the moratorium has precluded us from making any changes to bad debt policy for hospitals, although the Congress has authorized subsequent changes through legislation. The moratorium does not apply to entities other than hospitals. Since the inception of the Medicare program, bad debt reimbursement for entities other than hospitals has been and continues to be at our discretion. According to *Kidney Center of Hollywood, et al.* v. *Shalala,* the Secretary's discretion on this matter is broad as long as it is authorized by statute and is rationally justified. Therefore, we believe any changes made to bad debt policy for these other entities can be implemented by regulation.

2. Balanced Budget Act of 1997

From 1989 to 1996, provider and entity cost report data showed an alarming growth in bad debt payments in the Medicare program. For hospitals alone, from 1990 to 1994, total Medicare bad debt payments grew 165 percent, from $415 million to $1.1 billion. During this period, the inpatient bad debts grew 140 percent, from $270 to $650 million, and Part B (primarily outpatient) bad debts tripled, from $140 to $430 million. In 1997, with increasing concern over the rapidly expanding payout for bad debts under Medicare, the Congress responded with section 4451 of the Balanced Budget Act (BBA) of 1997 (Pub. L. 105–33). Section 4451 of the BBA amended section 1861(v)(1) of the Act by adding section 1861(v)(1)(T). The legislation required that, in determining reasonable costs for hospitals, the amount of bad debts otherwise treated as allowable costs (attributable to deductibles and coinsurance amounts) should be reduced by 25 percent for fiscal year (FY) 1998, by 40 percent for FY 1999, and by 45 percent for subsequent years.

3. The Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000

As a response to concerns from Medicare hospitals that the fiscal impact of this provision of the BBA was too harsh, the Congress enacted section 541 of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (Pub. L. 106–554) (BIPA). This eased the reduction in hospital bad debt reimbursement from 45 percent to 30 percent. Although the Congress decreased the reduction of bad debt reimbursement for hospitals, the BIPA did not address the issue for other providers.

E. Impact Using Prospective Payment Systems on the Role of Bad Debt in Medicare Payment Systems

The introduction of the PPS has changed the context for Medicare's bad debt policy. The PPS for inpatient hospital services was introduced in 1983 out of a notion that cost reimbursement systems provided an incentive for providers to incur costs. The costs were passed along to Medicare automatically and provided no incentive for prudent and efficient management of hospital resources. This methodology provided no opportunity for hospitals to earn profit through efficiency. The DRG payments were intended to provide a context in which the hospitals that achieved savings through efficiency and innovative practices could profit from their efforts. In fact, the result of this change in payment system was that hospital Medicare margins (a rough measure of the extent to which payments exceeded actual costs) rose immediately and have continued to exceed pre-PPS levels.

In this context, making separate payments for uncollected Medicare deductible and coinsurance amounts is no longer an appropriate expression of Medicare's responsibility for reimbursement, especially in a marketplace where commercial insurers do not make similar adjustments in their payments. In fact, the availability of additional payment when debts are not collected provides an incentive to the provider to forego effective collection efforts in return for the certainty of Medicare payments. If Medicare did not recognize these payments, there would be a greater incentive for the hospitals to attempt to collect from the beneficiary. We believe that the percentage reduction in bad debt reimbursement would be a step toward fostering this incentive for nonhospital entities.

Fiscal responsibility to the Medicare program is an important factor in implementing this rule. We believe that reducing the amount of Medicare bad debt reimbursement by 30 percent will encourage accountability and foster an incentive to be more efficient in bad debt collection efforts. We also believe strongly that Medicare bad debt policy should be applied consistently and fairly among all providers eligible to receive bad debt reimbursement. Currently, hospitals are the only entities experiencing a reduction in bad debt reimbursement. Furthermore, ESRD facilities are the only entities whose bad debt claims are capped at the facilities costs.

After considering the action of the Congress in setting the reduction in bad debt reimbursement at 30 percent for hospitals, we decided that the number used by the Congress in this action was an equitable and reasonable policy choice with respect to entities other than hospitals. Subsequently, we decided to draft a regulation that would advance a consistent bad debt reimbursement policy for all Medicare entities. To implement this rule, we propose to remove the cap on allowable bad debt for ESRD facilities and apply the 30 percent reduction in bad debt reimbursement that was legislated for hospitals to all Medicare providers or entities eligible to receive payments in recognition of Medicare bad debts. We propose to implement the reduction in bad debt incrementally (as the Congress chose to do to implement the BBA reduction for hospitals) over a 3-year period to mitigate the impact on entities. Again, as discussed above, we believe that the percentage reduction in bad debt reimbursement would be a step toward fostering an incentive for nonhospital entities to make conscientious, effective collection efforts on their unpaid Medicare patient accounts.

II. Provisions of the Proposed Rule

A. Removal of Cap on End-Stage Renal Disease Bad Debt Reimbursement

In accordance with the DC Circuit Court ruling discussed above and in order to be consistent with other entities as mandated in the President's 2003 budget, the cap on ESRD bad debt reimbursement should be removed.

This proposed rule would, therefore, remove the cap on ESRD bad debts and allow ESRD facilities to claim bad debts at an amount exceeding unrecovered costs.

B. Adjustment in Allowable Bad Debt Reimbursement to Hospital Levels

As discussed above, we propose to reduce the amount of allowable bad debt for entities other than hospitals by 10 percent for cost reporting periods beginning October 1, 2003, by 20 percent for cost reporting periods beginning October 1, 2004, and by 30 percent for cost reporting periods beginning October 1, 2005 and thereafter. The entities currently included in this proposal are SNFs, ESRD facilities, rural health clinics, critical access hospitals, community mental health clinics, and federally qualified health clinics. Cost HMOs/CMPs and health care pre-payment plans are excluded from the proposed 30 percent reduction as the bad debt reimbursement for these entities is already limited according to § 417.536. The unpaid deductible and coinsurance amounts for services rendered by these entities is limited to no more than 3 months of the premium (portion related to deductible and coinsurance) for any one individual. To be reimbursable, the deductible and coinsurance must relate to what is covered under Medicare and under our contract with the HMO/CMP. As discussed above, the incremental reduction over a 3-year period is intended to mitigate the impact on entities.

C. Confirmation of Bad Debt Policy for Services Paid Under a Charge-Based Methodology or Fee Schedule

This proposed rule would amend language in the existing bad debt regulations to clarify that bad debts are not recognized or reimbursed for any services paid under a reasonable charge-based methodology or a fee schedule. This clarification is not a change in policy.

III. Collection of Information Requirements

This document does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C.A. section 3506(c)(2)(A)).

IV. Response to Comments

Because of the large number of items of correspondence we normally receive on **Federal Register** documents published for comment, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the "DATES" section of this preamble, and, if we proceed with a subsequent document, we will respond to the major comments in the preamble to that document.

V. Regulatory Impact Statement

We have examined the impacts of this rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), the Regulatory Flexibility Act (RFA) (September 16, 1980, Pub. L. 96–354), section 1102(b) of the Act, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), and Executive Order 13132. We believe that this regulation would qualify as a major rule.

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA must be prepared for major rules with economically significant effects ($100 million or more in any 1 year). We believe that this regulation would qualify as a major rule and that the impact would be economically significant.

Most ESRD facilities would benefit from this proposed rule, as they would be allowed to claim and receive reimbursement for more of their Medicare bad debts, allowing them to claim bad debts over their unrecovered costs.

Some entities, such as SNFs and rural health clinics, may experience a reduction in their bad debt reimbursement as a result of this rule. Data from SNF cost reports show bad debt totals of $8,244,192 for FYE 1996, $13,070,786 for FYE 1997 and $12,501,755 for 1998 (only settled cost report data was used and fewer cost reports were settled for 1998). Bad debt data for independent rural health clinics, federally qualified health centers and community mental health clinics is not captured because the independent facilities, which make up the majority of these entities, do not file electronic cost reports. The reduction in reimbursement would also affect critical access hospitals, which are defined under section 1820 of the Act and were not subject to the reduction in bad debt reimbursement imposed by the BBA on hospitals defined in section 1861(v)(1). Cost report data for critical access hospitals was badly skewed because of systems problems after November 1,

1997. Lab and outpatient services (which one Intermediary reports accounts for 30 to 40 percent of the revenue for critical access hospitals) for some of these entities were reimbursed on a cost basis with applicable coinsurance and deductible amounts, while some of these entities were paid under a fee schedule with no reimbursement for bad debts. As of November 29, 1999, coinsurance and deductibles were eliminated from lab services for critical access hospitals. We expect that this action will significantly reduce the amount of bad debt incurred by these facilities.

The following is the individual estimate of the economic impact of this rule between provider types (in $millions):

Fiscal year	SNF	ESRD	Net impact
2003	−20	20	0
2004	−30	20	10
2005	−70	20	50
2006	−90	20	70
2007	−100	20	80

The impact on all other provider types would round to $0. For both SNF and ESRD facilities, these savings or costs represent only a small portion (about 0.5%) of the total Medicare payments for those facilities.

Section 1102(b) of the Act requires us to prepare a regulatory impact analysis (RIA) if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds. Although this rule would impact some small rural hospitals, including critical access hospitals, most hospitals have already been subject to the 30 percent reduction implemented by statute. We believe this rule would not have a significant impact on the operations of a substantial number of small rural hospitals and the impact would be mitigated by implementing the rule gradually over a 3-year period.

The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and governmental agencies. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $6 million to $29 million annually. Intermediaries and carriers are not considered to be small entities.

Small rural hospitals of fewer than 100 beds, rural health clinics, community mental health centers, free-standing ESRD facilities, and hospital-based ESRD facilities would be affected by this rule. There are approximately 352 critical access hospitals, and all of these facilities would be small rural hospitals. To the extent that they incur bad debts, they would be affected. It is very difficult to assess the impact on these facilities because the impact, if any, on a facility would be influenced by the amount of bad debts the facility incurs. However, the elimination of coinsurance and deductible amounts for lab services rendered by critical access hospitals should substantially reduce the amount of bad debt that these small hospitals incur. Any Medicare participants that are currently receiving full (that is, uncapped) reimbursement for their bad debts would see a reduction in payment.

Based on current data, there are approximately 3,528 freestanding and 787 hospital-based ESRD facilities. Although we are not certain how many of these facilities are small rural hospital-based, most ESRD facilities would benefit from this rule as they would be allowed to claim and receive reimbursement for more of their Medicare bad debts, allowing them to claim bad debts over their unrecovered costs. Costs are difficult to estimate because, as discussed above, not all uncapped ESRD bad debts were reported. We welcome all comments that would assist us in determining the possible impact of this rule on any of the above-mentioned entities.

Specific provisions of this proposed rule have already been applied in part to those ESRD facilities affected by the above-mentioned *Kidney Center* court settlement. These provisions, whether implemented as a result of the court settlement or the rule, were achieved through modifications made to the bad debt settlement portion of the cost report.

We do not believe that the changes made in a final rule will affect beneficiary access to care, as affected providers will continue to be reimbursed for services provided to Medicare beneficiaries, including, where allowable, for Medicare bad debt. By reducing the amount of bad debt reimbursement from 100 percent to 70 percent, this rule will fairly compensate providers, while providing an incentive for them to make reasonable efforts to collect unpaid deductibles and coinsurance.

The analysis indicates that some small, rural providers may experience an additional burden in the form of reduced payments for bad debts. However, our analysis points out that a number of factors will mitigate the impact on small rural hospitals and that payments to ESRD facilities will increase because of the removal of the cap on allowable bad debts claimed. It is impossible to determine the significance of the impact or the number of entities that may be adversely affected. We invite comments on our analysis.

The Unfunded Mandates Reform Act of 1995 also requires (in section 202) that agencies perform an assessment of anticipated costs and benefits before proposing any rule that may result in an annual expenditure in any 1 year by State, local, or Tribal governments, in the aggregate, or by the private sector, of $110 million. This rule does not impose any mandates on State, local or Tribal governments, or on the private sector, as defined by section 202. Entities such as hospitals, SNFs and ESRD facilities will continue to receive Medicare reimbursement for services provided to beneficiaries, including, where allowable, bad debt reimbursement.

For purpose of analysis, we considered two alternatives to this policy, (1) maintaining the existing Medicare bad debt policy, or (2) eliminating bad debt reimbursement, where we had authority to do so. However, we believe that the Medicare bad debt policy proposed in this rule is equitable across provider types and ensures that providers have the incentive to make reasonable efforts to collect bad debts without affecting beneficiary access to care. In addition, the removal of the cap on bad debt reimbursement for ESRD facilities is also in accordance with the ruling in *The Kidney Center of Hollywood, et al.* v. *Shalala*.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. This rule would not have a substantial effect on State or local governments.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

List of Subjects in 42 CFR Part 413

Health facilities, Kidney diseases, Medicare, Puerto Rico, Reporting and record-keeping requirements.

For the reasons set forth in the preamble, CMS proposes to amend 42

CFR chapter IV part 413 as set forth below:

PART 413—PRINCIPLE OF REASONABLE COST REIMBURSEMENT; PAYMENT FOR END-STAGE RENAL DISEASE SERVICES; PROSPECTIVELY DETERMINED PAYMENT RATES FOR SKILLED NURSING FACILITIES

Subpart F—Specific Categories of Cost

1. The authority citation for part 413 continues to read as follows:

Authority: Sections 1102, 1812(d), 1814(b), 1815, 1833(a), (i), and (n), 1871, 1881, 1883, and 1886 of the Social Security Act (42 U.S.C. 1302, 1395d(d), 1395f(b), 1395g, 1395l(a), (i), and (n), 1395hh, 1395rr, 1395tt, and 1395ww).

2. In § 413.80, paragraphs (h) and (i) are revised to read as follows:

§ 413.80 Bad debts, charity, and courtesy allowances.

* * * * *

(h)(1) *Limitations on bad debts for hospitals.* The amount of bad debts otherwise treated as allowable costs (as defined in paragraph (e) of this section) is reduced as follows for cost reporting periods beginning during:

(i) Fiscal year 1998, by 25 percent.

(ii) Fiscal year 1999, by 40 percent.

(iii) Fiscal year 2000, by 45 percent.

(iv) All subsequent fiscal years, by 30 percent.

(2) *Limitations on bad debts for other entities.* Except as provided in § 417.536 of this title, the amount of bad debts otherwise treated as allowable costs (as defined in paragraph (e) of this section) is reduced as follows for cost reporting periods beginning on or after:

(i) October 1, 2003, by 10 percent.

(ii) October 1, 2004, by 20 percent.

(iii) October 1, 2005 and all subsequent years, by 30 percent.

(i) *Exception.* Bad debts arising from services paid under a reasonable charge-based methodology or a fee schedule are not reimbursable under the program.

Subpart H—Payment for End-Stage Renal Disease (ESRD) Services and Organ Procurement Costs

3. In § 413.178, paragraph (a) is revised to read as follows:

§ 413.178 Bad debts.

(a) CMS will reimburse each facility its allowable Medicare bad debts, as defined in § 413.80(b)(1), as determined under Medicare principles, in a single lump sum payment at the end of the facility's cost reporting period. The amount of allowable bad debt is reduced in accordance with § 413.80(h)(2).

* * * * *

(Catalog of Federal Domestic Assistance Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: September 3, 2002.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

Approved: January 2, 2003.

Tommy G. Thompson,

Secretary.

[FR Doc. 03–2974 Filed 2–3–03; 4:31 pm]

BILLING CODE 4120–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 90

[WT Docket No. 02–55; DA 03–19]

Supplemental Comments of the Consensus Parties Filed in the 800 MHz Public Safety Interference Proceeding; Request for Comments

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; request for comments.

SUMMARY: This document seeks comment on ''Supplemental Comments of the Consensus Parties'' filed in the 800 MHz Public Safety Interference Proceeding—WT Docket No. 02–55. The Bureau, by this action, affords interested parties an opportunity to submit comments and reply comments that will improve public safety operations in the 800 MHz band. Improving public safety operations in the 800 MHz band will reduce interference experienced by 800 MHz public safety operators.

DATES: Comments are due on or before February 3, 2003 and Reply Comments are due on or before February 18, 2003.[1]

ADDRESSES: Federal Communications Commission 445, 12th Street, SW., TW–A325, Washington, DC 20554. *See* **SUPPLEMENTARY INFORMATION** for filing instructions.

FOR FURTHER INFORMATION CONTACT: Karen Franklin, Esq. or Michael J. Wilhelm, Esq., Policy and Rules Branch, Public Safety and Private Wireless Division at (202) 418–0680.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Public Notice, DA 03–19, released on January 3, 2003. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW., Washington, DC 20554. The complete text may be purchased from the Commission's copy contractor, Qualex International, 445 12th Street, SW., Room CY–B402, Washington, DC. 20554. The full text may also be downloaded at: *www.fcc.gov.* Alternative formats are available to persons with disabilities by contacting Brian Millin at (202) 418–7426 or TTY (202) 418–7365 or at *bmillin@fcc.gov.*

On December 24, 2002, a group of sixteen parties filed ''Supplemental Comments of the Consensus Parties'' in WT Docket 02–55, Improving Public Safety Communications in the 800 MHz Band—Consolidating the 900 MHz Industrial/Land Transportation and Business Pool Channels (67 FR 16351, April 5 2002). [2] In these comments, the parties provide additional details concerning the ''Consensus Plan'' for addressing interference issues in the 800 MHz band. In order to develop a full and complete record, the Wireless Telecommunications Bureau issues this public notice seeking comment on the Supplemental Comments of the Consensus Parties (Supplemental Comments). The Commission will accept comments on the Supplemental Comments on or before February 3, 2003; and reply comments on or before February 18, 2003.

The Supplemental Comments primarily address four issues: (1) Funding for the Consensus Plan; (2) procedures and processes for relocating 800 MHz incumbents; (3) post-realignment interference protection standards; and (4) border area realignment plans.

Interested parties may view the ''Supplemental Comments of the Consensus Parties'' on the Commission's Electronic Comment Filing System (ECFS) using the following steps: (1) Access ECFS at *http://www.fcc.gov/e-file/ecfs.html.* (2) In the introductory screen, click on ''Search for Filed Comments.'' (3) In the ''Proceeding'' box, enter ''02–55.'' (4) In the ''Filed on Behalf of'' box, enter ''Consensus Parties.'' (5) In the ''Date Submitted'' box, enter ''12/24/2002.'' In addition, the Supplemental Comments of the Consensus Parties will be available for inspection and duplication during regular business hours in the FCC Reference Information Center (RIC) of the Consumer and Governmental Affairs Bureau, Federal

[1] This document was received at the Office of the Federal Register on February 5, 2003.

[2] Subsequent to issuance of the public notice, the comment and reply comment dates were extended to February 10, 2003 and February 25, 2003, respectively (published elsewhere in this issue). *See* Improving Public Safety Communications in the 800 MHz Band and Consolidating the 800 MHz Industrial Land Transportation and Business Pool Channels, *Order Extending Time for Filing of Comments*, WT Docket 02–55, DA 03–163 (January 16, 2003)

Communications Commission, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. Copies of the Supplemental Comments of the Consensus Parties also may be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, (202) 863–2893, facsimile (202) 863–2898, or via e-mail *qualexint@aol.com.* For further information regarding the public reference file for this Public Notice, contact Maria Ringold, Chief, Wireless Branch, RIC, (202) 418–1355, with reference to the DA number of this *Public Notice*.

Comments may be filed using the ECFS or by filing paper copies. See Electronic Filing of Documents in Rule Making Proceedings, 63 Fed. Reg. 24121 (1988). Comments filed through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html.* In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the docket number ''02–55.''

Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov*, and should include the following words in the body of the message: ''get form <your e-mail address>.'' A sample form and directions will be sent in reply. Parties who choose to file by paper must file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. The Commission's contractor, Vistronix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Ave., NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail or Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

Federal Communications Commission.

D'wana R. Terry,

Chief, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau.

[FR Doc. 03–3276 Filed 2–6–03; 3:02 pm]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 90

[WT Docket No. 02–55; DA 03–163]

Improving Public Safety Communications in the 800 MHz Band; Consolidating the 800 MHz Industrial/Land Transportation and Business Pool Channels Order Extending Time for Filing of Comments

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; extension of comments and reply comments due dates.

SUMMARY: This document addresses the Request for Extension of Time (Request) filed by the Cellular Telecommunications & Internet Association (CTIA). The Request sought additional time to respond to the public notice that sought comment on ''Supplemental Comments of the Consensus Parties'' filed in the 800 MHz Public Safety Interference Proceeding—WT Docket No. 02–55. The Bureau extended the comment and reply comment due dates. Extending the comment and reply comment period permits for a more thorough review of the proposal advanced in the ''Supplemental Comments of the Consensus Parties'' and affords additional time to prepare comments and reply comments. Such comments will enhance the record of WT Docket 02–55 and lead to an improvement in public safety operations in the 800 MHz band and will reduce interference experienced by 800 MHz public safety operators.

DATES: Comments are due on or before February 10, 2003 and Reply Comments are due on or before February 25, 2003.

ADDRESSES: Federal Communications Commission 445, 12th Street, SW., TW–A325, Washington, D.C. 20554. *See* Supplementary Information for filing instructions

FOR FURTHER INFORMATION CONTACT: Karen Franklin, Esq., or Michael J. Wilhelm, Esq., Policy and Rules Branch, Public Safety and Private Wireless Division at (202) 418–0680.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Order Extending Time for Filing of Comments*, DA 03–163, adopted on January 16, 2003, and released on January 16, 2003. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW., Washington, DC 20554. The complete text may be purchased from the Commission's copy contractor, Qualex International, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. The full text may also be downloaded at: *www.fcc.gov*. Alternative formats are available to persons with disabilities by contacting Brian Millin at (202) 418–7426 or TTY (202) 418–7365 or at *bmillin@fcc.gov*.

On December 24, 2002, the ''Consensus Parties'' filed supplemental comments further explaining the particulars of their proposal addressing interference experienced by 800 MHz public safety systems. On January 3, 2003, the Wireless Telecommunications Bureau sought comment on the Consensus Parties supplemental comments. On January 13, 2002, the Cellular Telecommunications & Internet Association (CTIA) filed a *Request for Extension of Time* (*Request*) in the captioned proceeding, asking that the current date set for the filing of comments, February 3, 2003, and the date set for filing of reply comments, February 18, 2003, be extended by four weeks; *i.e.* that the date for submitting comments be changed to March 3, 2003, and the date for submitting reply comments be changed to March 18, 2003. We also note that Cinergy Corporation, Entergy Corporation and Entergy Services, Inc., Consumers Energy Company and Southern Communications Company each submitted pleadings supporting CTIA's request.

It is the policy of the Commission that extensions of time are not routinely granted. Here, CTIA requests additional time to thoroughly review the plan presented in the supplemental comments thereby to provide a more complete record in this docket. CTIA also asserts that it needs additional time to permit consultation with its members and expert personnel. It submits that time is not of the essence in this proceeding because the proposed band reconfiguration would take several years to implement. We disagree. On March 15, 2002, the Commission released the *Notice of Proposed Rule Making* (*NPRM*), [67 FR 16351, April 5, 2002], associated with this docket. In the *NPRM*, the Commission stated that it intended to move swiftly to achieve its objective—improving the spectrum environment for public safety operations in the 800 MHz Band. However, finding some merit in the arguments advanced by CTIA and in the supporting pleadings, we believe that a modest extension of time '' one week '' may serve to compile a more complete record. Therefore, we hereby extend the comment date to February 10, 2003 and extend the reply comment date to February 25, 2003.

Accordingly, *it is Ordered* that CTIA's *Motion for Extension of Time is Granted* to the extent expressed herein and *is Denied* in all other respects, and that the time for filing comments in the captioned proceeding *is Extended* until February 10, 2003 and the time for filing reply comments in the captioned proceeding *is Extended* until February 25, 2003.

Federal Communications Commission.

D'wana R. Terry,

Chief, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau.

[FR Doc. 03–3275 Filed 2–6–03; 3:02 pm]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 0, 43, 63 and 64

[IB Docket Nos. 02–324, 96–261; DA 03–312]

International Settlements Policy Reform and International Settlement Rates

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; extension of reply comment period.

SUMMARY: On October 25, 2002, the Federal Communications Commission published a proposed rule document initiating a proceeding to re-examine the Commission's International Settlements Policy. The Commission received comments from a substantial number of foreign carriers or associations based in foreign countries. To ensure proper translations as well as the need for timely access to the initial comments, the Commission decided to extend the reply comment period by 12 days.

DATES: Reply comments are due on or before February 18, 2003.

ADDRESSES: Federal Communications Commission, Office of the Secretary, 445 12th Street, SW., Washington, DC 20554. See Supplementary Information for filing instructions.

FOR FURTHER INFORMATION CONTACT: James Ball, Chief, or Lisa Choi, Senior Legal Advisor, Policy Division, International Bureau, (202) 418–1460.

SUPPLEMENTARY INFORMATION:

1. On October 11, 2002, the Commission released a Notice of Proposed Rulemaking (NPRM) seeking comment from the public regarding possible reform of its International Settlements Policy, International Simple Resale and benchmarks policies, and the issue of foreign mobile termination rates. (*See* 67 FR 65527, October 25, 2002.)

2. On January 14, 2003, the Commission received comments from twenty parties on the issues under consideration in the NPRM. A substantial number of initial commenters are either foreign carriers or associations based in foreign countries. Therefore, recognizing the potential need of some of these commenters for additional time to ensure proper translations as well as the need for timely access to the initial comments through the Commission's Electronic Comment Filing System (ECFS), we extend the comment due date for replies regarding the NPRM, FCC 02–285, IB Docket Nos. 02–324 & 96–261, by 12 days to February 18, 2003 in order to afford all members of the public a full opportunity to comment on the issues raised in the initial comments. We find that the public interest will be served by this brief extension of the reply dates to allow for a more complete record in this proceeding.

3. Accordingly, pursuant to § 1.1 of the Commission's rules, 47 CFR 1.1, the new reply comment due date is February 18, 2003. Instructions for filing pleadings in this proceeding are set forth in the NPRM, available on the Commission's Web site at *http://www.fcc.gov.*

Federal Communications Commission:

James Ball,

Chief, Policy Division, International Bureau.

[FR Doc. 03–3137 Filed 2–7–03; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 173

[Docket No. RSPA–99–6223 (HM–213B)]

RIN 2137–AD36

Hazardous Materials: Safety Requirements for External Product Piping on Cargo Tanks Transporting Flammable Liquids

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Advance notice of proposed rulemaking (ANPRM).

SUMMARY: RSPA is considering alternatives for reducing safety risks associated with the transportation of flammable liquids in unprotected product piping (wetlines) on DOT specification cargo tank motor vehicles. In this notice, RSPA is soliciting comments and information regarding methods to reduce the risks posed by wetlines. In addition, we are seeking answers to questions to assist in determining whether further regulatory action is warranted. Regulatory amendments that may be promulgated as a result of comments to this notice will be developed jointly with the Federal Motor Carrier Safety Administration (FMCSA), which has primary enforcement authority for cargo tank motor vehicles and highway transportation.

DATES: Comments must be received by June 10, 2003.

ADDRESSES: *Written Comments:* Submit written comments to the Dockets Management System, U.S. Department of Transportation, Room PL. 401, 400 Seventh Street, SW., Washington, DC 20590–0001. Comments should identify the docket number, RSPA–99–6223 (HM–213B), and be submitted in two copies. If you wish to receive confirmation that RSPA has received your comments, include a self-addressed stamped postcard. You may also submit comments via e-mail by accessing the Dockets Management System Web site at ''*http://dms.dot.gov*''. Click on ''Help & Information'' to obtain instructions for filing the document electronically. You may also send your comments by facsimile to (202) 366–3753.

The Docket Management System is located on the Plaza Level of the Nassif Building at the U.S. Department of Transportation at the above address. You may review public dockets between the hours of 9 a.m. and 5 p.m., Monday through Friday, excluding Federal holidays. Internet users may review all comments on-line at the DOT Docket Management System Web site at "*http://dms.dot.gov*".

FOR FURTHER INFORMATION CONTACT: Mr. Michael Stevens, Office of Hazardous Materials Standards, Research and Special Programs Administration, telephone (202) 366–8553; Mr. Philip Olson, Office of Hazardous Materials Technology, Research and Special Programs Administration, telephone (202) 366–4545; or Mr. Danny Shelton, Office of Safety and Technology; Federal Motor Carrier Safety Administration, telephone (202) 366–6121, U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION:

I. Background

The Hazardous Materials Regulations (HMR; 49 CFR Parts 171–180), at § 173.33(e), prohibit the retention of certain liquid hazardous materials in the external product piping of a DOT specification cargo tank, unless the cargo tank motor vehicle is equipped with bottom damage protection devices. The bottom damage protection devices must meet the requirements of § 178.337–10 for the MC 331 specification; § 178.345–8(b) for DOT 400-series specifications; or the accident damage protection requirements of the specification under which any other cargo tank motor vehicle was manufactured. The current prohibition applies to liquid hazardous materials in Divisions 6.1 (toxic), 5.1 (oxidizer), 5.2 (organic peroxide), and Class 8 (corrosive to skin only). The prohibition does not apply to a residue that remains after the product piping is drained to the extent possible or to the retention of flammable liquids in product piping.

The Research and Special Programs Administration (RSPA; we) adopted the current requirements in final rules published under Docket No. HM–183, on June 12, 1989 (54 FR 24982) and September 7, 1990 (55 FR 37028). In the June 12, 1989 final rule, we amended the regulations to require accident damage protection devices on product piping containing liquid hazardous materials in Divisions 6.1 (toxic), 5.1 (oxidizer), 5.2 (organic peroxide), Classes 8 (corrosive to skin only), and 3 (flammable liquids), except for flammable liquid fuels transported in cargo tank motor vehicles equipped with meters for fuel tax purposes. These latter tanks were excluded because of the potential costs to modify the cargo tank motor vehicles and the apparent unavailability of a practical system to empty wetlines after bottom-loading. We also imposed limitations for the inside diameter and aggregate volume of all unprotected product piping on a cargo tank motor vehicle as a means to limit the quantity of lading retained in wetlines (54 FR 24987).

In the preamble of the June 12, 1989 final rule, we stated that bottom loading and unloading outlets on a cargo tank motor vehicle present an inherent risk that, if the outlets are damaged, the entire contents of the cargo tank may be released. To counteract this risk, we required product piping attached to the outlet valve to have a sacrificial device designed to break under accident loads. We also stated that during the 1980's, the petroleum industry chose to equip their cargo tanks with top vapor recovery systems and to bottom load as a means of complying with state implementation plans promulgated under the Clean Air Act. In implementing this system, the industry did not provide for draining or purging product from the cargo tank piping after it was bottom-loaded.

After publication of the June 12, 1989 final rule, we received hundreds of petitions for reconsideration. Several petitioners requested that we broaden the exception for flammable liquid fuels metered for fuel tax purposes to include all flammable liquids and certain other hazardous materials and to remove the quantity limitations for product retention in wetlines. Many of the concerns raised in these petitions, about the difficulties of removing product from loading lines or compliance with the accident damage protection requirements, had not been brought to our attention during the comment period for the NPRM or during any of the subsequent hearings or public meetings.

In the September 7, 1990 final rule that responded to the petitions for reconsideration, we amended the June 12, 1989 final rule to remove all of the adopted restrictions on transporting flammable liquids in wetlines. We realized that the petroleum industry needed additional time to implement design and operational changes before a prohibition against unprotected product piping could be adopted. We recognized the inherent difficulties in draining or purging product from the loading lines while maintaining an accurate metering system. However, we stated:

> We strongly encourage the petroleum industry to consider the risk it accepts in operating cargo tank motor vehicles over the highway with hazardous materials retained in the piping and that the hazardous materials industry consider and recommend possible alternatives to eliminate this risk in the most cost-effective manner.

We reiterated that the prohibition of lading in product piping was applicable only to DOT specification cargo tanks used to transport liquid hazardous materials. We also clarified that the prohibition in § 173.33(e) does not apply to cargo tank motor vehicles used to transport hazardous materials having relatively low hazards, such as combustible liquids, where the use of a specification cargo tank is not required. *See* 55 FR 37030.

On October 9, 1997, in Yonkers, New York a westbound MC 306 cargo tank motor vehicle containing 8,800 gallons of gasoline was struck broadside in the area of the piping manifold by a southbound passenger vehicle. The initial impact fractured the cargo tank's product piping and released approximately 28 gallons of gasoline. After surviving the initial impact, the 62-year-old operator of the passenger vehicle died from burns sustained in the fire that ignited immediately following the collision. Once ignited, the fire eventually spread and consumed the entire contents of the cargo tank, destroying both vehicles and a New York State Thruway overpass.

As part of the accident investigation, investigators from the National Transportation Safety Board (NTSB) reviewed data related to MC 306 cargo tank motor vehicles in the Hazardous Materials Information System (HMIS) for the period January 1990 through August 1997. NTSB identified 501 cargo tank motor vehicle accidents reported during this period; 47 involved external product piping incidents due to outside forces. Of those 47 incidents, 27 involved collisions with other motor vehicles, 16 involved trucks hitting stationary objects, and four involved overturned cargo tank motor vehicles. Fires occurred in five of the 47 product piping incidents, resulting in two deaths, three major injuries, and reported damage estimates of over $800,000.

NTSB issued its accident summary report on May 5, 1998. The NTSB report (H 98–27) is available in this docket and by visiting the NTSB Internet Web site. In its report, NTSB stated that the immediate result of the Yonkers collision was a fire inside and below the car and that the fuel for the initial fire was the gasoline released from the cargo tank's loading lines during impact. The fire was then fed by gasoline from the cargo tank's compartments. NTSB concluded that had the loading lines been empty, the fire likely would not have occurred. Based on its investigation, the NTSB identified as a safety issue the danger of operating a truck when its cargo tank's unprotected loading lines are carrying hazardous materials. In its report, NTSB expressed particular concern about the severity of the Yonkers accident. As a result of its investigation, NTSB recommended (NTSB Recommendation H–98–27) that the Secretary of Transportation prohibit the carrying of hazardous materials in external product piping, such as loading lines, that may be vulnerable to damage in an accident.

On July 22, 1999, RSPA met with industry and trade representatives, at their request, to discuss the NTSB recommendation. Attendees included representatives from the American Petroleum Institute (API), Truck Trailer Manufacturers Association (TTMA), Petroleum Marketers Association of America (PMAA), National Tank Truck Carriers, Inc. (NTTC), Sigma, Sunoco, BP Amoco, and Marathon Ashland. Discussions focused on the cargo tank industry's development of alternative solutions for unprotected product piping. We indicated that we were aware of a purging system under development and invited industry to provide cost data or information on any other potential solutions.

On December 4, 2000, the Office of the Secretary of Transportation, General Counsel, on behalf of RSPA, submitted a significant NPRM to the Office of Management and Budget (OMB) for consideration. In the NPRM, we proposed to adopt a performance standard for substantially eliminating product from unprotected piping that could be met with current technology or by other innovative systems developed by industry.

The proposal required that all affected cargo tanks conform to the performance standard within seven years, allowing for two years of research and development, and, dependent upon the cargo tank's pressure test date, a maximum of five years for retrofits to achieve compliance.

The proposed rule provided an exception for truck-mounted tanks, based on inherent safety features, significantly reducing compliance costs to small businesses. The Petroleum Marketers Association of America (PMAA), a federation of 42 state and regional trade associations, represents 7,850 small, independent petroleum marketers that sell nearly half the gasoline consumed in this country. In a May 23, 2000 letter, PMAA suggested that straight trucks should not be included in any proposed rulemaking because it was unaware of any wet-lines-related fatalities involving straight trucks. The PMAA supported its suggestion by noting that the general design and construction of straight trucks is such that the placement of external product piping is afforded protection by the frame of the truck, the meter box and tool boxes. (The PMAA letter is in the docket for this rulemaking.)

On January 22, 2001, the NPRM was withdrawn for review by the current administration in accordance with a White House Chief of Staff directive. After review by the Secretary of Transportation, the NPRM was resubmitted to OMB for consideration.

On August 10, 2001, OMB returned the NPRM to the Department for reconsideration. In its return letter, OMB expressed concern with the methodology used to determine benefits and the true costs required to achieve them. First, regarding the retrofit of existing cargo tank motor vehicles, OMB was concerned that RSPA was engaging in a ''risk-risk'' tradeoff, that is, the increase in risk to install (*i.e.*, welding) a system to eliminate wetlines outweighed the benefits realized in lives saved on public highways. Second, OMB questioned whether some or all of the reported fatalities in the NPRM were the result of causes unrelated to wetlines (*e.g.*, blunt force trauma). Third, OMB questioned why RSPA would extrapolate the number of fatalities and injuries multiplied by a factor of 1.5 due to suspected under-reporting of incidents involving wetlines. OMB cited RSPA's ''Preliminary Assessment of Risk/Benefit-Cost,'' dated January 25, 1999, as stating that this increase in benefits might overstate the risks but was necessary when considering any rulemaking action. (This document is available for review at the RSPA Hazardous Materials Safety Web site, *http://hazmat.dot.gov/risk_analyses.htm*, and the DOT Docket Management System Web site, *http://dms.dot.gov*.) Finally, OMB did, however, indicate support for the prohibition of wetlines on newly constructed cargo tank motor vehicles based on the proposal's greater net benefits to society. (The August 16, 2001 OMB letter is in the docket for this rulemaking.)

It is because of these and other uncertainties with regard to cost vs. benefit and new construction vs. retrofit that we have chosen to issue an advance notice of proposed rulemaking. It is our intent to take a ''fresh look'' at this issue by soliciting comments on the narrative discussion and answers to the questions posed in Section V of this notice.

II. Fatal Accidents Attributed to Wetlines

The unprotected product piping on a five-compartment cargo tank motor vehicle carrying gasoline typically contains 30–50 gallons of gasoline. If a passenger vehicle strikes the side of a cargo tank motor vehicle, the impact likely will fracture the wetlines. In such collisions, the passenger vehicle is often wedged under the cargo tank motor vehicle. With the automobile driver and passenger(s) trapped in the vehicle under the cargo tank and the fractured product piping releasing 30–50 gallons of gasoline, the gasoline spills onto, underneath, or into the passenger vehicle. If ignited, fire rapidly engulfs the driver and passenger(s) inside their vehicle. When ignited, a gasoline spill of 50 gallons will be fatal to persons within a zone of approximately 41 feet, dooming those trapped in a vehicle at the site of the release and fire. If the fire is not extinguished immediately, it may spread from the gasoline originally contained in the product piping to the gasoline contained in the cargo tank motor vehicle. In this instance, the safety threat to the surrounding community is significant.

Since 1992, there have been seven reported accidents, resulting in eight fatalities, where wetlines were damaged and gasoline released. These fatal accidents primarily involve collisions with passenger vehicles. Our experience with the HMIS indicates that there is a degree of under-reporting of hazardous materials transportation accidents of all types. In addition, prior to October 1, 1998, certain intrastate highway carriers were not required to report hazardous materials releases to RSPA. Therefore, the HMIS data probably do not include all accidents involving damage to wetlines on cargo tank motor vehicles.

In this section, we describe a sampling of five fatal wetlines accidents. These descriptions provide an indication of the nature of the safety problem and its possible consequences. In these five accidents, six fatalities appear to have resulted from fires that ignited after passenger vehicles struck wetlines that then released gasoline.

Long Beach, CA (one fatality). On November 22, 1992, in Long Beach, California, a passenger vehicle struck a cargo tank motor vehicle on the right side and ruptured the unprotected product piping. Approximately 26 gallons of gasoline and diesel fuel were released and ignited immediately. The driver of the passenger vehicle died in the accident.

Houston, TX (one fatality). On October 1, 1994, in Houston, Texas, the driver of a passenger vehicle died after his westbound vehicle struck a northbound cargo tank motor vehicle broadside and the product piping sheared off the cargo tank and released 38 gallons of gasoline. A fire broke out. The driver was trapped inside the vehicle wedged under the cargo tank and died in the automobile.

Yonkers, NY (one fatality). On October 9, 1997, in Yonkers, New York, a passenger vehicle struck a cargo tank motor vehicle in the area of the external loading and unloading lines, fracturing the cargo tank's product piping and releasing approximately 28 gallons of gasoline. After surviving the initial impact of the collision, the 62-year old driver of the passenger vehicle died from burns and smoke inhalation from the fire that ignited immediately.

Hammond, IN (two fatalities). On November 12, 1999, in Hammond, Indiana, the 21-year old driver of a passenger vehicle and a four-year old passenger died from burns sustained in a fire that ignited immediately following the collision of their vehicle with a cargo tank motor vehicle. The passenger vehicle struck the cargo tank in the area of the piping manifold releasing the gasoline contained in the product piping. Both vehicles were destroyed by the fire that subsequently spread from the product piping and consumed the entire contents of the cargo tank.

Detroit, MI (one fatality). On July 11, 2001, near Detroit, Michigan, an out of control automobile crashed into a highway barrier and then collided with the underside of a cargo tank motor vehicle. The trapped automobile driver died as a result of the ignition of approximately 50 gallons of gasoline.

III. Alternatives for Addressing Safety Risk

In 1994, the American Petroleum Institute (API) initiated a two-phased study to assess the risks posed by petroleum products in unprotected product piping. Phase I of the study, titled *Alternative Means of Loading Cargo Tank Motor Vehicles*, analyzed the risks posed by the existing industry practice. This phase was completed in February 1994 and concluded:

> There is a small but definable risk to the public from a wet line spill. * * * the consequences can be more severe for the occupants of an automobile that impacts and fractures the wet lines and ignites the wet line contents. The majority of reported wet line spills are under 20 gallons. For this spill size of 20 gallons, the calculated maximum injury radius is 36 feet.

Phase II of the study was to identify engineering designs that would have the potential for eliminating wetlines or provide collision protection to reduce or eliminate the risk. Because Phase I of the study concluded that the probability of a fatality being directly attributed to wetlines is ''quite low,'' the second phase of the study was not considered. In its Executive Summary API stated, ''Based on the information gathered, the fatality rate from wetline spills is one for every 1.8×10^{10} miles traveled, or one fatality every eleven years.'' It also noted that additional information indicated the fatality rate could be considerably higher. In fact, this information indicated that ''the fatality rate for these conditions is one for every 1.1×10^{9} miles'' traveled, or 0.7 fatalities per year.

We are aware of two systems that have been demonstrated to reduce risks from wetlines. The first is an onboard system that evacuates the wetlines by forcing the lading out of the product piping and into the cargo tank body. After loading is complete and the main cargo compartment valves are closed, the system introduces compressed air from an auxiliary tank into the product piping under low pressure and at a low flow rate. Lading in the product piping flows through separate purging lines into the cargo tank body. This purging process is controlled automatically and lasts approximately six minutes. The system is also capable of detecting and automatically purging any leakage of product through the cargo tank's internal shutoff valve into the product piping, thereby eliminating a potential wetline condition during transportation. For an average cargo tank motor vehicle, the weight increase for a manual purging system is approximately 48 pounds.

The second system involves adding a set of short lines for loading that are independent of the unloading lines. These short loading lines, placed on the lower part of the cargo tank, are accessible and are not exposed to damage in case of rollover. Each short four-inch inside diameter pipe extends from the cargo tank wall and contains approximately one gallon of hazardous material; depending on the number of compartments on the cargo tank motor vehicle, the short line piping system on the vehicle could contain 4–5 gallons of hazardous material rather than the 30 to 50 gallons contained in a typical product piping system. For an average cargo tank motor vehicle, the weight increase for the short external product piping option is approximately 50 pounds.

For a system using separate loading lines, it may be feasible to recess the loading connections into the interior cargo tank body so that the surface of the loading inlet is flush with the cargo tank wall. This option may be preferred by cargo tank manufacturers and owners because it eliminates the need to ensure that external product piping is designed and positioned so as to protect the integrity of the cargo tank wall in the event of an accident. Recessing of loading inlets within the cargo tank wall would be expected to eliminate the risks posed by external product piping and could be designed to meet the appropriate accident damage protection requirements. At the present time, however, this option may be unrealistic because substantial modifications to existing loading racks would be necessary or loading times would increase due to the cargo tank being moved to reach loading arms. In addition, there are questions about the effectiveness of such a design and whether it might adversely impact the structural integrity of the cargo tank.

We understand that one major oil company, representing less than one percent of the potentially affected cargo tank population, has chosen to outfit its fleet with a system that purges product from unprotected external piping. Two additional carriers installed the same purging system on a small portion of their fleets as part of a successful field evaluation and expressed interest in equipping their entire fleets. However, these carriers have chosen to defer installation pending possible RSPA rulemaking.

There may also be other ways to reduce wetlines risk. For example, many of the incidents of which we are aware appear to be caused because automobile drivers do not see the cargo tank motor vehicle. Perhaps marking or other systems that increase vehicle conspicuity could be effective in reducing collisions between cargo tank motor vehicles and automobiles.

Further, we are aware that at least one cargo tank operator has installed under-ride protection on its cargo tank motor vehicles. Although this protection may not meet the bottom damage protection requirements under § 178.345–8(b), we invite comments on whether this may or may not substantially reduce the risks posed by unprotected product piping.

IV. Costs and Benefits of Risk Reduction Measures

It is our understanding that the useful life of a cargo tank motor vehicle is at least 20 years. However, we are aware that many cargo tank motor vehicles may remain in service for up to 30 years. Based on information in the U.S. Census Bureau's 1997 *Vehicle Inventory and Use Survey (VIUS),* it appears that the average annual population of cargo tank motor vehicles that would be affected by any rulemaking action is approximately 63,000. This number includes bottom-loaded single-unit trucks, straight trucks pulling trailers, and truck-tractors pulling trailers in flammable liquid service. Cargo tank motor vehicles average four compartments each, with piping that contains an aggregate total of approximately 40 gallons of product.

As previously discussed, we are aware of two systems that may reduce risk from wetlines. A manual onboard purging system can be installed on a newly constructed cargo tank motor vehicle for about $2,100 (welded) or $2,250 (non-welded) (2002 dollars). Equipment and installation costs are the same for the retrofit of existing cargo tank motor vehicles; however, additional costs in the form of lost profit or installation risk may be incurred. The independent short loading line system can be installed for $1,540 per cargo tank motor vehicle (2002 dollars). Because of the complexity of such a design, however, it may not be appropriate for the retrofit of existing cargo tank motor vehicles. We invite comments on the feasibility of retrofits of existing vehicles to reduce or eliminate product in wetlines and on costs that may be associated with such a retrofit.

We believe there may be other cost-effective solutions that could significantly reduce or eliminate the current level of risk. We encourage commenters to identify other possible approaches to reducing or eliminating the risks posed by the transportation of flammable liquids in wetlines.

Quantified and monetized benefits realized from action to reduce the transportation risks associated with wetlines would be in the form of reductions in fatalities, major and minor injuries, product losses, carrier damages, public and private property damages, risks to emergency responders, decontamination and cleanup costs, and evacuation costs. Through the HMIS database and information provided by the NTSB, we identified 194 reported incident cases involving wetlines during the period of 1990–2001. As previously discussed, we are aware of at least six fatalities as a result of five of those incidents where piping was damaged and gasoline released.

In addition to quantified/monetized benefits, measures to reduce wetlines risks would reduce losses by the private sector (in terms of time and productivity), by government (in terms of allocation of scarce resources, including emergency responders, their support vehicles and equipment), and by the general public (in terms of time and inconvenience). Some elements of actual and potential losses are: (1) The closure of transportation arteries; (2) the evacuation of homes, businesses and other facilities that are in harm's way; and (3) productivity losses in terms of facility and/or personnel down time attributed to traffic delays and/or facility evacuations.

V. Questions for Commenters

In general, we seek comments to determine whether regulatory changes are needed and can be made in a cost-effective manner. In particular, we invite commenters to respond to the following questions:

A. General

1. Are the statistics and data (*e.g.*, cargo tank population, useful life of a cargo tank, accident frequency and consequences), costs (*e.g.*, purging system, short-loading lines, new construction, retrofit), and potential benefits (*e.g.*, fatalities, injuries, and property damages prevented) provided in this ANPRM accurate?

2. What is the useful life of a cargo tank motor vehicle utilized for the transportation of flammable liquids?

3. What percentage of cargo tank motor vehicles are operated at maximum weight limits such that any additional weight of a system to eliminate wetlines would impose a weight penalty?

4. For cargo tank motor vehicles in flammable liquid service, what is the average distance per trip?

5. In addition to the potential benefits described in this ANPRM, are there additional benefits, measurable or otherwise, that would result from implementation of measures to reduce wetlines risks?

6. Should a benefit-cost analysis include the reduction of risks associated with low-frequency, high-consequence events?

7. Would requirements for systems to reduce the risk posed by wetlines for all newly constructed cargo tank motor vehicles result in significant reductions in per unit cost because of economies of scale?

B. Current Market Practices

1. What safety practices, other than those described in this ANPRM, are motor carriers currently utilizing to reduce the risks associated with the transportation of flammable liquids in wetlines?

2. How effective are these safety practices in reducing the risks associated with wetlines on cargo tanks?

3. What are the costs of these safety practices currently utilized?

4. Would an industry or industry/government sponsored research initiative to explore new methods to eliminate wetlines be of value?

5. If so, what would be the value of such a partnership?

C. Facility Modification

1. Concerning the short and recessed loading lines systems described in this ANPRM, what modifications to loading arms or hoses at existing loading racks would be necessary to accommodate short, including recessed within the cargo tank wall, loading lines?

2. What would be the cost of these modifications?

3. Can loading rack fuel tax accounting systems be modified to allow for product reversal once the cargo tank is full and the internal valves are closed, thus draining the loading lines?

4. Is this option viable?

5. What would such a modification cost?

D. Alternatives

Independent Loading Lines

1. Are the short and recessed loading lines options practicable for installation on new cargo tank motor vehicles?

2. Are either of these options practicable for installation on existing cargo tank motor vehicles (*i.e.*, retrofit)?

3. Are there any motor carriers actively operating or contemplating operating cargo tank motor vehicles with such a design?

4. If so, what configuration was utilized and what was the cost to modify the cargo tank?

5. Would maintaining a vehicle with such a design (*i.e.*, independent loading lines) result in higher or lower costs than currently utilized designs?

Purging System

1. How effective is a purging system in reducing the risks posed by wetlines?

2. Is a purging system practicable for installation on new cargo tank motor vehicles?

3. Is a purging system practicable for installation on existing cargo tank motor vehicles (*i.e.*, retrofit)?

4. Are there any motor carriers actively operating or contemplating operating cargo tank motor vehicles with a purging system?

5. If so, what configuration is utilized (automatic, manual, other) and what was the cost to modify the cargo tank?

6. What are the costs to maintain a cargo tank motor vehicle with a purging system installed?

Conspicuity

1. Would improved conspicuity for cargo tank motor vehicles generally, or wetlines in particular, reduce wetlines risks?

2. How effective would improved conspicuity be?

3. Are there marking or lighting systems currently available that could improve the visibility of cargo tank motor vehicles or components of those vehicles to other drivers?

Accident Damage Protection

1. Are there cost-effective designs for accident damage or under-ride protection (*e.g.*, guards), specification or otherwise, that would reduce the risks posed by unprotected product piping?

2. What would these designs cost?

3. What level of protection (*i.e.*, impact forces sustained) would be both cost-effective and provide a significant reduction in risks associated with wetlines?

Non-Regulatory

Would a non-regulatory approach, such as an awareness campaign to alert the public as to the hazards posed by wetlines, be successful in helping to reduce the risks posed by wetlines?

Other

1. In addition to the purging and short-line systems described in this ANPRM, are there other systems currently being marketed or in development that can evacuate wetlines after loading or prevent wetlines from retaining liquid during loading operations?

2. What are the costs or projected costs of such systems?

3. How effective are they?

4. How close to implementation are systems currently in the development phase?

5. Are there other concepts, either related to vehicles or facilities, that might have application in reducing the risks posed by wetlines?

VI. Regulatory Notices

There are a number of additional issues that we must address in determining whether to proceed with any rulemaking action. These include the analyses required under the following statutes and Executive Orders:

A. Executive Order 12866: Regulatory Planning and Review

This rulemaking is considered a significant regulatory action under section 3(f) of Executive Order 12866 and the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11032). This ANPRM was reviewed by the Office of Management and Budget.

E.O. 12866 requires agencies to regulate in the ''most cost-effective manner,'' to make a ''reasoned determination that the benefits of the intended regulation justify its costs,'' and to develop regulations that ''impose the least burden on society.'' We therefore request comments, including specific data if possible, concerning the costs and benefits that may be associated with regulatory measures to reduce the safety risks associated with transportation of flammable liquids in wetlines. We would also be interested in comments on the several issues relating to the measurement of costs and benefits and the treatment of newly constructed as opposed to retrofitted cargo tank motor vehicles raised in the OMB Return Letter (discussed in Section I of this notice). To the extent feasible systems may be available to achieve compliance with a proposal to reduce wetlines risks, we invite commenters to discuss the effectiveness of such systems and to provide estimates of the unit cost of new construction and the unit cost to retrofit a cargo tank motor vehicle in the existing fleet. Alternatively, if there are feasible means to comply with a proposal by modifying equipment or procedures at the loading facility, interested parties are invited to provide comments on their cost and effectiveness.

B. Executive Order 13132: Federalism

E.O. 13132 requires agencies to assure meaningful and timely input by state and local officials in the development of regulatory policies that may have a substantial, direct effect on the States, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. We invite State and local governments with an interest in this rulemaking to comment on the effect that regulatory measures to reduce wetlines risks may have on State or local safety or environmental protection programs.

C. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

E.O. 13175 requires agencies to assure meaningful and timely input from Indian tribal government representatives in the development of rules that ''significantly or uniquely affect'' Indian communities and that impose ''substantial and direct compliance costs'' on such communities. We invite Indian tribal governments to provide comments as to the effect that regulatory measures to reduce wetlines risks may have on Indian communities.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires each agency to review regulations and assess their impact on small entities unless the agency determines that a rule is not expected to have a significant impact on a substantial number of small entities. ''Small entities'' include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations under 50,000. Interested parties are invited to comment on estimates of the costs and benefits of rulemaking scenarios that would reduce wetlines risks, including any impact on small businesses.

E. National Environmental Policy Act

The National Environmental Policy Act of 1969 (NEPA) requires that Federal agencies consider the consequences of major Federal actions and that they prepare a detailed statement on actions significantly affecting the quality of the human environment. Interested parties are invited to review the Environmental Assessment available in the docket at *http://dms.dot.gov,* and to comment on what environmental impact, if any, a regulatory proposal to reduce wetlines risks would have.

F. Regulation Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document may be used to cross-reference this action with the Unified Agenda.

Issued in Washington, DC, on February 4, 2003, under authority delegated in 49 CFR Part 106.

Robert McGuire,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. 03–3262 Filed 2–7–03; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

49 CFR Part 1180

[STB Ex Parte No. 282 (Sub–No. 20)]

Railroad Consolidation Procedures—Exemption for Temporary Trackage Rights

AGENCY: Surface Transportation Board, DOT.

ACTION: Notice of proposed exemption and rulemaking.

SUMMARY: The Surface Transportation Board (Board) is proposing to adopt a new class exemption and related regulations that would be available for trackage rights agreements that by their terms expire on a date certain and would permit their authorization for a limited period of time. Carriers utilizing this new class exemption would not be required to file for discontinuance authority at the end of the authorized period. The temporary trackage rights would automatically terminate on the date specified.

DATES: Comments must be submitted by March 12, 2003.

ADDRESSES: Send an original and 10 copies of any comments referring to STB Ex Parte No. 282 (Sub-No. 20) to: Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 565–1600. [Federal Information Relay Service (FIRS) for the hearing impaired: 1–800–877–8339.]

SUPPLEMENTARY INFORMATION:

Trackage Rights

Acquisition by a rail carrier of trackage rights over a railroad line owned or operated by another rail carrier may be carried out only with the approval and authorization of the Board. *See* 49 U.S.C. 11323(a)(6). Under 49 U.S.C. 11324(d), the Board is required to approve trackage rights applications unless we find that (1) as a result of a transaction, there is likely to be substantial lessening of competition, creation of a monopoly, or restraint of trade in freight surface transportation in any region of the United States, and (2) the anticompetitive effects of the transaction outweigh the public interest in meeting significant transportation needs.

Use of Exemption Authority

The Staggers Rail Act of 1980 substantially broadened the authority of our predecessor, the Interstate Commerce Commission (ICC), and hence our authority, to exempt transactions from regulation. Under 49 U.S.C. 10502, we are directed to exempt a person, class of persons, or a transaction or service from our regulation whenever we find that (1) regulation is not necessary to carry out the RTP, and (2) either the transaction or service is of limited scope or regulation is not needed to protect shippers from an abuse of market power. We may exempt not only a single transaction, but an entire class of transactions, as the ICC did when adopting the existing class exemption at 49 CFR 1180.2(d)(7). A class exemption does not mean that a particular transaction is beyond our reach. Rather, it is a means by which a carrier may obtain an authorization without going through a full regulatory process, in the types of cases to which the class exemption applies.

Existing Class Exemption for Trackage Rights

In *Railroad Consolidation Procedures,* 1 I.C.C.2d 270 (1985), the ICC adopted a class exemption for trackage rights based on written agreements and not sought in responsive applications in rail consolidation proceedings. *See* 49 CFR 1180.2(d)(7).[1] In adopting those procedures, the ICC found that exempting trackage rights proposals as a class would promote the RTP and competition generally because trackage rights facilitate operating efficiencies. The ICC also found that the exemption was limited in scope because the class of exempted transactions was limited and, typically, trackage rights transactions either involved modifications in operations that promoted efficiency for the operator and maintained the status quo, or involved the addition of a competing carrier to a line through trackage rights that increased the number of carriers on the line and increased competition for traffic. For these reasons, the ICC also found that regulation of this class of trackage rights is not necessary to protect shippers from an abuse of market power.

Proposed Class Exemption

Our reason for instituting this proceeding is that authorization of trackage rights approved under the current class exemption remains in effect indefinitely, regardless of any durational contract provision. However, in recent years parties have sought authorization for temporary trackage rights that were to expire on a certain date. On a number of occasions, those requests have involved carriers that were about to perform extensive maintenance over portions of their heavily used track. Other requests for temporary trackage rights have involved the need to accommodate the short-term storage of rail cars or the need to make provision for local service, line relocation and rehabilitation projects, as well as a variety of freight, intercity passenger and commuter operations.

Generally, a carrier seeking such a time-limited authorization has first filed a notice of exemption under 1180.2(d)(7), thereby acquiring authority to exercise trackage rights indefinitely over a particular line. Subsequently, it has filed a request that we allow the authorization to expire on a certain date. In the past, we have analyzed these subsequent filings on a case-by-case basis under 49 U.S.C. 10502, and have routinely granted the requested petition to allow the authorization to expire on a specific date.[2] In those individual cases, having found the time-limited authorization to be consistent with the statutory limited scope criterion, we have not found it necessary to examine whether full regulation of a temporary trackage rights arrangement is necessary to protect shippers from an abuse of market power.

Given our experience in those cases, we believe that both rail carriers and the public would benefit from a rule that expressly provides a class exemption from 49 U.S.C. 11323 to permit authorization, for a limited period of time, of trackage rights that by their terms expire on a date certain. We further believe that this proposal is consistent with the exemption criteria at 49 U.S.C. 10502, as next discussed.

Individual approval of trackage rights transactions for which the carriers seek authorization for a limited period of time does not appear to be necessary to carry out the goals of the RTP. Rather, exempting such proposals as a class would promote the RTP by eliminating the need to file a second pleading seeking discontinuance when the agreement expires, thereby minimizing regulation of the rail system (49 U.S.C. 10101(2)), promoting the continuation of a sound rail system by facilitating the

[1] Published in the **Federal Register** at 50 FR 15751. These rules were subsequently amended in 1986, 1993, and 1997.

[2] This second filing has often taken the form of a petition seeking a partial revocation of the class exemption, or a petition seeking an exemption to permit the trackage rights operations to remain in effect only on a temporary basis. Regardless of the form, we have generally dealt with each request as a request that the Board permit the authorization to expire on a particular date.

process of line repair and maintenance (49 U.S.C. 10101(4)), and promoting coordination between rail carriers (49 U.S.C. 10101(5)). The proposed class exemption would also reduce the regulatory uncertainty of the parties, facilitate the parties' ability to reach agreement on temporary trackage rights, reduce the filing fees required of carriers seeking such rights, and encourage more use of trackage rights in general and temporary trackage rights in particular. 49 U.S.C. 10101 (7), (15).

The proposed exemption also appears to be of limited scope because we are limiting the class of exempted transactions. And the authorization for trackage rights will be limited in duration.

In addition, it appears that regulation of this class of temporary trackage rights is not necessary to protect shippers from an abuse of market power. Providing temporary trackage rights authorization would not reduce competition, and temporary trackage rights authorizations that add no service on the line (e.g., overhead, or bridge, traffic) merely maintain the status quo among carriers and shippers on the line. Public comments are invited on all of these conclusions, as well as on possible negative consequences, if any, that could result from such a class exemption.

Implementation of the Class Exemption

If the proposed class exemption is adopted, an eighth category of exempt transactions would be added to our rail consolidation regulations. We would amend 49 CFR part 1180 by adding new sections 1180.2(d)(8), and 1180.4(g)(2)(iii) and (iv). Consistent with the regulations in part 1180, carriers seeking to use the proposed exemption would be required to submit the information required by 49 CFR 1180.4(g)(1)(i). This includes the names of the applicants, a summary of the nature of the proposed transaction, a contact person, the proposed time schedule for consummation, the purpose to be accomplished, any other supporting statements deemed material by applicants, the level of labor protection to be imposed, a list of the states in which any part of the property of each applicant carrier is located, and a map showing the involved lines. In addition, the caption summary required in connection with this proposed class exemption must specify the date the authorization will expire. 49 CFR 1180.4(g)(2)(iii). An executed copy of the written trackage rights agreement must also be submitted.

As noted, section 1180.4(g)(1)(i) requires that the exemption notice filed with the Board indicate the level of employee protection to be imposed.[3] As with other grants of trackage rights, approval of temporary trackage rights agreements under 49 U.S.C. 11323 must include the employee protective conditions set forth in *Norfolk and Western Ry. Co.-Trackage Rights-BN,* 354 I.C.C. 605 (1978), as modified by *Mendocino Coast Ry., Inc.-Lease and Operate,* 360 I.C.C. 653 (1980), *aff'd sub nom. Railway Labor Executives' Association* v. *ICC*, 675 F.2d 1248 (D.C. Cir. 1982). Accordingly, all temporary trackage rights exemptions would be so conditioned.

As previously discussed, under 49 U.S.C. 10903, after a carrier begins trackage rights operations, even when conducted under an exemption, discontinuance of the service may not occur absent a certificate of discontinuance, or exemption therefrom, issued by the Board. This requirement would continue to apply to carriers utilizing the current trackage rights class exemption, 49 CFR 1180.2(d)(7). Although we normally require that a carrier seeking to terminate trackage rights operations file a separate request for discontinuance authority, this requirement of a separate filing would be unnecessary under the proposed new 49 CFR 1180.2(d)(8) class exemption. In these cases, the authority to exercise trackage rights temporarily, only until a particular date, would implicitly include the authority to discontinue service on that date. Therefore, we would not require separate discontinuance authority to terminate temporary trackage rights operations authorized under the proposed class exemption. Finally, we note that the proposed class exemption would be limited to temporary trackage rights transactions and would not operate to exempt any other regulated activities conducted on that track or exempt any associated transactions of the involved carriers.

Conclusion

We propose under 49 U.S.C. 10502 to add a new category to the specific categories of exempt transactions listed at 49 CFR 1180.2(d). This new category, to be set forth, if adopted, at 49 CFR 1180.2(d)(8), would be for temporary trackage rights proposals under 49 U.S.C. 11323 that are: (1) Based on written agreements, (2) not filed or sought in responsive applications in rail consolidation proceedings, and (3) scheduled to expire on a specific date.

[3] Under 49, U.S.C. 10502(g), in granting exemptions, we may not relieve a carrier of its obligations to protect employees.

We also propose to add new subsections (iii) and (iv) to 49 CFR 1180.4(g)(2), regarding the caption summary to be provided by applicant and published in the **Federal Register**. The exemption as proposed would embrace temporary trackage rights sought for any purpose. Public comments on this specific proposal, its scope, and its limits are invited.

Standard labor protective conditions would be imposed on any carrier using this class exemption. Carriers using this class exemption could discontinue service without the need to obtain a certificate or exemption from the Board. Comments on these proposals are also invited.

Regulatory Flexibility Analysis

The Director of the Office of Proceedings has certified, by decision served concurrently with this notice and to be published in the **Federal Register**, that the proposed exemption will not have a significant impact on a substantial number of small entities. Exemption should not affect small shipper or carrier entities because the result of the temporary trackage rights proposed for exemption would not affect rail operations except to increase efficiency. No shipper would lose service and other shippers might receive more efficient service under the proposal. No carrier's operations would be significantly affected by the temporary trackage rights proposed for exemption.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

List of Subjects in 49 CFR Part 1180

Administrative practice and procedure, Railroads.

Authority : 49 U.S.C. 10502(b) and 5 U.S.C. 553.

Decided: January 31, 2003.

By the Board, Chairman Nober, Vice Chairman Burkes, and Commissioner Morgan.

Vernon A. Williams,

Secretary.

For the reasons set forth in the preamble, the Surface Transportation Board proposes to amend part 1180 of title 49, chapter X, of the Code of Federal Regulations as follows:

PART 1180—RAILROAD ACQUISITION, CONTROL, MERGER, CONSOLIDATION PROJECT, TRACKAGE RIGHTS, AND LEASE PROCEDURES

1. The authority citation for Part 1180 continues to read as follows:

Authority: 5 U.S.C. 553 and 559; 11 U.S.C. 1172; 49 U.S.C. 721, 10502, 11323–11325.

2. Amend § 1180.2 by revising the first sentence of paragraph (d) introductory text and by adding a new paragraph (d)(8) to read as follows:

§ 1180.2 Types of Transactions.

* * * * *

(d) A transaction is exempt if it is within one of the following eight categories. * * *

* * * * *

(8) Acquisition of temporary trackage rights by a rail carrier over lines owned or operated by any other rail carrier or carriers that are:

(i) Based on written agreements,

(ii) Not filed or sought in responsive applications in rail consolidation proceedings, and

(iii) Scheduled to expire on a specific date. Rail carriers acquiring temporary trackage rights need not seek authority from the Board to discontinue the trackage rights as of the expiration date specified under § 1180.4(g)(2)(iii).

3. Amend § 1180.4 by adding new paragraphs (g)(2)(iii) and (iv) to read as follows:

§ 1180.4 Procedures.

* * * * *

(g) * * *

(2) * * *

(iii) To qualify for an exemption under § 1180.2(d)(8) (acquisition of temporary trackage rights), in addition to the notice, the railroad must file a caption summary suitable for publication in the **Federal Register**. The caption summary must be in the following form:

Surface Transportation Board

Notice of Exemption

Finance Docket No.

(1)—Temporary Trackage Rights—(2).

(2) (3) to grant (4) temporary trackage rights to (1) between (5). The temporary trackage rights will be effective on (6). The authorization will expire on (7).

This notice is filed under § 1180.2(d)(8). Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction.

Dated: ______________________

By the Board.

[Insert name]

____

Secretary.

The following key identifies the information symbolized in the summary.

(1) Name of the tenant railroad.

(2) Name of the landlord railroad.

(3) If an agreement has been entered use ''has agreed,'' but if an agreement has been reached but not entered use ''will agree.''

(4) Indicate whether ''overhead'' or ''local'' trackage rights are involved.

(5) Describe the temporary trackage rights.

(6) State the date the temporary trackage rights agreement is proposed to be consummated.

(7) State the date the authorization will expire.

(iv) The Board will publish the caption summary in the **Federal Register** within 20 days of the date that it is filed with the Board. The filing of a petition to revoke under 49 U.S.C. 10502(d) does not stay the effectiveness of an exemption.

* * * * *

[FR Doc. 03–3251 Filed 2–7–03; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Parts 20, 21, and 92

RIN 1018–AI84

Migratory Bird Subsistence Harvest in Alaska; Proposed Spring/Summer Subsistence Harvest Regulations for Migratory Birds in Alaska During the 2003 Subsistence Season

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service or we) is proposing to establish spring/summer migratory bird subsistence harvest regulations in Alaska for the 2003 subsistence season. The proposed regulations prescribe frameworks, or outer limits, for dates when harvesting of birds may occur, species that can be taken, and methods and means excluded from use. These proposed regulations were developed under a new co-management process involving the Service, the Alaska Department of Fish and Game, and Alaska Native representatives. They are not intended to be a complete, all-inclusive set of regulations, but are intended to provide an initial framework to legalize customary and traditional subsistence uses of migratory birds in Alaska. The rulemaking is necessary because the regulations governing the subsistence harvest of migratory birds in Alaska are subject to annual public review. This rulemaking proposes regulations that expire on August 31, 2003, for the spring/summer subsistence harvest of migratory birds in Alaska. Seasons will open after April 1 and close prior to September 1.

DATES: You must submit comments on the proposed spring/summer harvest regulations for migratory birds in Alaska on or before March 12, 2003.

ADDRESSES: Send your comments on this proposed rule to the Regional Director, Alaska Region, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska, 99503 or fax them to (907) 786–3641.

FOR FURTHER INFORMATION CONTACT: Fred Armstrong, (907) 786–3887 or Donna Dewhurst, (907) 786–3499, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Mail Stop 201, Anchorage, Alaska 99503.

SUPPLEMENTARY INFORMATION:

What Events led to This Action?

In 1916, the United States and Great Britain (on behalf of Canada) signed the Convention for the Protection of Migratory Birds in Canada and the United States (Canada Treaty). The treaty prohibited commercial hunting for, and specified a closed season on the taking of, migratory game birds between March 10 and September 1 of each year. In 1936, the United States and Mexico signed the Convention for the Protection of Migratory Birds and Game Mammals (Mexico Treaty). The Mexico treaty prohibited the taking of wild ducks between March 10 and September 1. Neither treaty took into account and allowed adequately for the traditional harvest of migratory birds by northern peoples during the spring and summer months. This harvest, which had occurred for centuries, was necessary to the subsistence way of life in the north and thus continued despite the closed season.

The Canada treaty and the Mexico treaty, as well as migratory bird treaties with Japan (1972) and Russia (1976), have been implemented in the United States through the Migratory Bird Treaty Act (MBTA). The courts have ruled that the MBTA prohibits the Federal Government from permitting any harvest of migratory birds that is inconsistent with the terms of any of the migratory bird treaties. The more restrictive terms of the Canada and Mexico treaties thus prevented the Federal Government from permitting the traditional subsistence harvest of migratory birds during spring and summer in Alaska. To remedy this situation, the United States negotiated Protocols amending both the Canada and Mexico treaties to allow for spring/summer subsistence harvest of migratory birds by indigenous inhabitants of identified subsistence harvest areas in Alaska. The U.S. Senate approved the amendments to both treaties in 1997.

What will the Amended Treaty Accomplish?

The major goals of the amended treaty with Canada are to allow for traditional subsistence harvest and to improve conservation of migratory birds by allowing effective regulation of this harvest. The amended treaty with Canada allows permanent residents of villages within subsistence harvest areas, regardless of race, to continue harvesting migratory birds between March 10 and September 1 as they have done for thousands of years. The Letter of Submittal of May 20, 1996 from the Department of State to the White House which officially accompanied the treaty protocol, explains that lands north and west of the Alaska Range and within the Alaska Peninsula, Kodiak Archipelago, and the Aleutian Islands generally qualify as subsistence harvest areas. Treaty language provides for further refinement of this determination by management bodies.

The amendments are not intended to cause significant increases in the take of migratory birds relative to their continental population sizes. Therefore, the Letter of Submittal places limitations on who is eligible to harvest and where they can harvest migratory birds. Anchorage, the Matanuska-Susitna and Fairbanks North Star Boroughs, the Kenai Peninsula roaded area, the Gulf of Alaska roaded area, and Southeast Alaska generally do not qualify as subsistence harvest areas. Limited exceptions may be made so that some individual communities within these excluded areas may qualify for designation as subsistence harvest areas for specific purposes. For example, future regulations could allow some villages in Southeast Alaska to collect gull eggs.

The amended treaty with Canada calls for creation of management bodies to ensure an effective and meaningful role for Alaska's indigenous inhabitants in the conservation of migratory birds. According to the Letter of Submittal, management bodies are to include Alaska Native, Federal, and State of Alaska representatives as equals. Together they will develop recommendations for, among other things: seasons and bag limits, methods and means of take, law enforcement policies, population and harvest monitoring, education programs, research and use of traditional knowledge, and habitat protection. The management bodies will involve village councils to the maximum extent possible in all aspects of management.

The management bodies will submit relevant recommendations to the Service and to the Flyway Councils. Restrictions in harvest levels for the purpose of conservation will be shared equitably by users in Alaska and users in other States, taking into account nutritional needs of subsistence users in Alaska. The treaty amendments are not intended to create a preference in favor of any group of users in the United States or to modify any preference that may exist, nor do they create any private rights of action under U.S. law.

What Has the Service Accomplished Since Ratification of the Amended Treaty?

In 1998, we began a public involvement process to determine how to structure management bodies in order to provide the most effective and efficient involvement for subsistence users. We began by publishing a notice in the **Federal Register** stating that we intended to establish management bodies to implement the spring and summer subsistence harvest (63 FR 49707, September 17, 1998). The Service, the Alaska Department of Fish and Game, and the Native Migratory Bird Working Group held public forums to provide information regarding the amended treaties and to listen to the needs of subsistence users. The Native Migratory Bird Working Group was a consortium of Alaska Natives formed by the Rural Alaska Community Action Program to represent Alaska Native subsistence hunters of migratory birds during the treaty negotiations. We held forums in Nome, Kotzebue, Fort Yukon, Allakaket, Naknek, Bethel, Dillingham, Barrow, and Copper Center. We led additional briefings and discussions at the annual meeting of the Association of Village Council Presidents in Hooper Bay and for the Central Council of Tlingit & Haida Indian Tribes in Juneau. Staff members from National Wildlife Refuges in Alaska also conducted public meetings in the villages within their refuge areas and discussed the amended treaties at those meetings.

On July 1, 1999, we published in the **Federal Register** (64 FR 35674) a notice of availability of an options document, entitled ''Forming management bodies to implement legal spring and summer migratory bird subsistence hunting in Alaska.'' This document described four possible models for establishing management bodies and was released to the public for review and comment. We mailed copies of the document to approximately 1,350 individuals and organizations, including all tribal councils and municipal governments in Alaska, Native regional corporations and their associated nonprofit organizations, the Alaska Department of Fish and Game, Federal land management agencies, representatives of the four Flyway Councils, conservation and other affected organizations, and interested businesses and individuals. We distributed an additional 600 copies at public meetings held in Alaska to discuss the four models. We also made the document available on the U.S. Fish and Wildlife Service Web page.

During the public comment period, we received 60 written comments addressing the formation of management bodies. Of those 60 comments, 26 were from tribal governments, 20 from individuals, 10 from nongovernmental organizations, 2 from the Federal Government, 1 from the State of Alaska, and 1 from the Native Migratory Bird Working Group. In addition to the 60 written comments, 9 of the 10 Federal Subsistence Regional Advisory Councils passed resolutions regarding the four models presented.

On March 28, 2000, we published in the **Federal Register** (65 FR 16405) the Notice of Decision, ''Establishment of Management Bodies in Alaska To Develop Recommendations Related to the Spring/Summer Subsistence Harvest of Migratory Birds.'' This notice described the establishment and organization of management bodies.

Based on the wide range of views expressed on the options document, the decision incorporated key aspects of two of the models. The decision established one statewide management body consisting of 1 Federal member, 1 State member, and 7–12 Alaska Native members, with each component serving as equals. Decisions and recommendations of this management body will be by consensus wherever possible; however, if a vote becomes necessary, each component, Federal, State, and Native, will have one vote. This body will set a framework for annual regulations for spring and summer subsistence harvest of migratory birds.

The Alaska Regional Director of the Service divided Alaska into 12 geographic regions based on common subsistence resource use patterns and the 12 Alaska Native Regional Corporation boundaries under the Alaska Native Claims Settlement Act. Despite using the Alaska Native Regional Corporation boundaries, we are not working directly with the Regional Corporations in this program, and are instead working with the Alaska Native non-profit groups and local governments in those corresponding regions. Eleven regional bodies have elected to participate in the statewide management body at this time. Out of all of the regions represented in the statewide management body, only eight regions actually represent included areas (50 CFR part 92.5). These eight eligible regions submitted proposals to open harvest in 2003.

In April 2000, we met with the Alaska Department of Fish and Game and the Native Migratory Bird Working Group to discuss bylaws for the statewide management body. At that meeting, participants decided to name the statewide management body the ''Alaska Migratory Bird Co-management Council.'' On October 30, 2000, the Co-management Council convened for the first time to establish organizational guidelines and to begin preparation for the development of recommendations for regulations. On December 17, 2001, the Co-management Council met to refine organizational procedures and to discuss Alaska Frameworks/Guidelines for development of regulations for the first harvest season.

Over the winter of 2001/2002, the regional management bodies submitted recommendations for regulating the harvest within their regions. Recommendations were received only from the eight regions with communities included in the 2003 proposed harvest. The other four regions did not send in recommendations. On May 14, 2002, the Co-management Council met to make final recommendations on harvest dates and methods and means of harvest for the 2003 season as necessary to protect the migratory bird resource. The Co-management Council recommendations were sent to the four Flyway Councils for comments, and presentations were made at July 2002 meetings of the Pacific and Central Flyway Councils. The Co-management Council's harvest recommendations were initially presented to the Service Regulations Committee (SRC) on August 31, 2002, with final SRC action on October 24, 2002.

On April 8, 2002, we published in the **Federal Register** (67 FR 16709) a proposed rule to establish procedures for implementing a spring/summer migratory bird subsistence harvest in Alaska. The proposed rule provided for a public comment period of 46 days. We mailed copies of the proposed rule to more than 1,200 individuals and organizations that were on the project mailing list. We conducted two public meetings in Anchorage where people could ask questions or provide formal comment.

By the close of the public comment period on May 24, 2002, we had received written responses from 11 entities. Four of the responses were from individuals, five from organizations, one from the Alaska Legislature, and one from the Alaska Department of Fish and Game. On August 16, 2002, we published in the **Federal Register** (67 FR 53511) a final rule, which established procedures for incorporating subsistence management into the continental migratory bird management program. These procedural regulations establish an annual procedure to develop harvest guidelines for implementation of a spring/summer migratory bird subsistence harvest.

This is the first year that we will prescribe annual frameworks, or outer limits, for dates when subsistence harvest of birds may occur, the list of species that may be taken, methods and means excluded from use, etc. The proposed frameworks are not intended to be a complete, all-inclusive set of regulations, but are intended to provide an initial framework to legalize customary and traditional subsistence uses of migratory birds in Alaska during the spring and summer. The proposed rulemaking is necessary because the regulations governing the subsistence harvest of migratory birds in Alaska are subject to annual establishment and public review, *i.e.*, the season is closed unless opened. This proposed rule introduces regulations for reorganization of the regional areas, harvest seasons, methods, and means related to taking of migratory birds for subsistence uses in Alaska during the spring/summer of 2003. The creation of part 92 also necessitates the need for nonsubstantive changes to parts 20 and 21, and we have proposed these changes in the rule portion of this document.

How Did the Service Meet the International Aspects of the Migratory Bird Treaties?

The Service's authority arises from the four international treaties implemented by the Migratory Bird Treaty Act. Formerly, the 1916 Convention between the United States and Great Britain on behalf of Canada and the 1936 treaty with the United Mexican States contained language that precluded most spring/summer subsistence harvest of migratory birds in Alaska. Both of these treaties have now been amended to allow the U.S. government to implement subsistence harvests during the closed season by indigenous inhabitants of identified subsistence harvest areas in Alaska. Specifically, the Protocol with Canada, Article II of the Treaty was revised to allow migratory birds and their eggs to be harvested by the indigenous inhabitants of the State of Alaska, regardless of the closed season provisions in Article II.

Although the Protocol with the United Mexican States was amended to allow for the taking of wild ducks by indigenous inhabitants of Alaska, the hunting season limitation specified in Article II Part C was not altered. Therefore, the length of the Alaskan spring/summer subsistence harvest of migratory birds cannot exceed the period specified within the Mexican convention, which is 4 months. Historically, we have interpreted this restriction as 124 days. Therefore, to be consistent with the Mexican Treaty, subsistence harvest between March 11 and September 1 must be limited to 124 days. The above interpretation of season length came late in this initial regulatory process. The Co-management Council had developed season recommendations without being aware of a 124-day season limitation; therefore, the Service has elected to open the season on April 2, 2003, and allow the ''Closed Season Policy'' (53 FR 16877, May 12, 1988) to remain in effect through April 1. Under the ''Closed Season Policy,'' the closed season is selectively enforced to protect those species for which there is greatest conservation concern. Following April 1, 2003, the ''Closed Season Policy'' will no longer be in effect. The regulations in 50 CFR part 20 will apply to all migratory bird harvests by all people in Alaska from September 1, 2003 to March 11, 2004.

The 1974 Migratory Bird Treaty with Japan provides for ''taking of migratory birds by Eskimos, Indians, and Indigenous peoples of the Trust Territory of the Pacific Islands for their own food and clothing.'' The Japan Treaty further stipulates that ''Open seasons for harvesting migratory birds may be decided by each Contracting Party respectively. Such harvesting seasons shall be set so as to avoid their principal nesting seasons and to maintain their populations in optimum numbers.'' In conformance with this provision, the Service developed a provision that would allow the traditional subsistence harvesting of eggs while also providing protection during the most critical part of the production period. Using ducks and geese as the initial model (with applications later considered for seabirds), a 30-day closed period targets the last two weeks of the incubation period and the first two weeks of the brood rearing period. This concept still permits an opportunity for traditional egg harvesting during the early period after egg laying, but protects the later developing eggs and newly hatched young. To determine the best protective closure periods for their harvest regions based on mean nest initiation and egg laying dates, regional management bodies within the Co-management Council worked with the Service's Division of Migratory Bird Management in Anchorage, Alaska. Closures in some regions were geographically subdivided to provide the best protection, while other regions were provided separate closures for waterfowl and seabirds (primarily murres).

In this proposed rule, the Yukon-Kuskokwim Delta region requested flexibility to set and announce the annual mid-season principal nesting closure period, based on local information, such as timing of snow melt and initiation of nesting. Thus, the closure period in the Yukon-Kuskokwim Delta region will be announced by the Alaska Regional Director or his or her designee, after consultation with biologists in the field, local subsistence users, and the region's Waterfowl Conservation Committee. A press release announcing the actual closure dates will be forwarded to regional newspapers and radio and television stations and posted in village post offices and stores.

How Will the Service Ensure That This New Legalized Subsistence Harvest Will Not Raise Overall Migratory Bird Harvest?

The Preamble of the Protocol amending the Canada Treaty states one of its goals is to allow a traditional subsistence hunt while also improving conservation of migratory birds through effective regulation of this hunt. In addition, the Preamble notes that, by sanctioning a traditional subsistence hunt, the Parties do not intend to cause significant increases in the take of migratory birds, relative to their continental population sizes, compared to the take that is presently occurring. Any such increase in take as a result of the types of hunting provided for in the Protocol would be inconsistent with the Convention.

Eligibility to harvest under these new regulations is limited to permanent residents, regardless of race, in villages located within the Alaska Peninsula, Kodiak Archipelago, the Aleutian Islands, or in areas north and west of the Alaska Range (50 CFR part 92.5). These geographical restrictions open the initial spring/summer subsistence migratory bird harvest to only about 13% of Alaska residents. High-population areas such as Anchorage, the Matanuska-Susitna and Fairbanks North Star boroughs; the Kenai Peninsula roaded area; the Gulf of Alaska roaded area; and Southeast Alaska are currently excluded from the eligible subsistence harvest areas. The eligible subsistence harvest areas were determined by a history of customary and traditional use of migratory birds during the spring and summer as provided in the Protocol amending the Canada Treaty. Adoption of annual harvest regulations will legalize the spring/summer subsistence harvest, but is not intended to initiate or somehow increase it, since subsistence harvest has a long history of prior use in these regions. In addition, some regions, such as Bristol Bay and the Northwest Arctic, indicated that local interest in harvesting birds was declining due to increased commercial availability of alternative foods.

Alaska Natives have long-standing conservation ethics and traditions that are passed from generation to generation through the teachings of elders. These customary and traditional teachings have provided for the perpetuation of migratory birds prior to the ratification of the Canada and Mexico treaty amendments and will continue to do so following the opening of the legal subsistence season. Ultimately it is these components of Native Alaskan culture, rather than regulations, that will provide the more restrictive limits on the harvest of migratory birds.

We have long recognized that a legal and equitable harvest opportunity should be provided during traditional harvesting periods within a regulated framework that ensures conservation of the resource. Without regulating this ongoing activity, populations of the most heavily harvested species, principally waterfowl, could experience declines, and the recovery of depressed populations would be more difficult. Legalizing the subsistence harvest could make any documentation of the take easier and any reporting more accurate. In addition, the regulations will become part of the comprehensive, continental system of migratory bird management, thus integrating subsistence uses with other uses for the first time. Further, the Alaska subsistence migratory bird harvest is presently thought to constitute only approximately 2–3% of the aggregate national migratory bird harvest.

Under the prior ''Closed Season Policy'' (53 FR 16877, May 12, 1988), it was the position of the Service to emphasize enforcement of restrictions on species of greatest conservation concern. Since its implementation, information on the ''Closed Season Policy'' has been broadly distributed in Alaska. We believe it is reasonable to assume that most subsistence users were aware of the policy and continued their traditional harvest of non-protected migratory bird species, so few new subsistence users should be attracted by legalizing their customary and traditional harvests. Indications are that subsistence harvests of migratory birds have, in the past, been generally under reported due to fear of prosecution. Legalization of the harvest could make people more comfortable about reporting take. This could lead to more accurate reporting and ultimately help in regulation setting and bird conservation.

Subsistence harvest has been monitored for the past 14 years through the use of annual household surveys in the most heavily used subsistence harvest areas (*e.g.*, Yukon-Kuskokwim Delta). Continuation of this monitoring would enable tracking of any significant changes or trends in levels of harvest and user participation after legalization of the harvest. The harvest survey forms that we used to collect information were not approved by the Office of Management and Budget (OMB). We are initiating the process to request OMB approval of these forms, and we will publish a notice in the **Federal Register** in the near future requesting public comment on this information collection. We will not conduct or sponsor these surveys until we obtain OMB approval of this information collection. If OMB approves the forms, we intend to begin a Statewide program to gather information that would provide a more comprehensive view of the overall subsistence harvest and more species-specific harvest data, especially on shore birds.

How Did the Service Come Up With the Methods and Means Prohibitions?

The Co-Management Council in general adopted the existing methods and means prohibitions that occur in the Federal (50 CFR part 20) and Alaska (AS 16.05.940(17)) migratory bird hunting regulations. Some exceptions were made to allow the continuation of customary and traditional spring harvest methods. For example, an exception was made to allow use of live birds as decoys for the harvest of auklets on Diomede Island.

Why Are No Daily Harvest Limits Proposed Under These Subsistence Regulations?

The concept of harvest or bag limits is difficult to apply to the traditional subsistence harvest. A subsistence harvest involves opportunistic use of resources when they are available or abundant, usually for short periods such as bird migration stopovers. Also, subsistence hunting traditionally is often not for individual purposes, meaning hunters are taking birds to be shared within the community, among several families. Historically, local survival depended on sharing which is a cultural value broadly taught and practiced both within and between communities. Often these designated village hunters are proficient in the techniques necessary to take specific species, for example, hunting murres from breeding areas along seacliff ledges. A restrictive daily limit for individual subsistence hunters would significantly constrain customary and traditional practices and limit opportunistic seasonal harvest opportunities within the Alaska subsistence communities.

The Co-management Council does recognize that setting harvest limits may become necessary, especially within local areas and individual species. However, these initial 2003 harvest regulations were not designed to be a complete, all-inclusive set of regulations, but intended to provide an initial framework to formally recognize and provide opportunities for the customary and traditional subsistence uses of migratory birds in Alaska. Within these initial frameworks, the first step in limiting the overall subsistence harvest was to establish a closed species list, that included regional restrictions. Establishing a 30-day closed period during the breeding season also limited the harvest impacts. The eventual need to further adjust levels of harvest take, either regionally or overall, is recognized and will be dealt with by the Co-management Council based on recommendations by their Technical Committee on an individual species basis. These decisions will likely be based on bird population status and past subsistence harvest data. Concepts such as community harvest limits and/or designated hunters may be considered to accommodate customary and traditional subsistence harvest methods.

How Did the Service Come Up With the List of Birds Open to Harvest?

The Service believed that it was necessary to develop a list of bird species that would be open to subsistence harvest during the spring/summer season. The original list was compiled from subsistence harvest data, with several species added based on their presence in Alaska without written records of subsistence take. The original intent was for the list to be reviewed by the regional management bodies as a check list. The list was adopted by the Co-management Council as part of the guidelines for the 2003 season. Most of the regions adopted the list as written; however, two regions created their own lists. One regional representative explained that it would take much more time than was available for his region to reduce the list and that, once a bird was removed, it would be more difficult to add it later. Going with the original list was viewed as protecting hunters from prosecution for the rare take of an unlisted bird. To understand this rationale, one must be aware that subsistence hunting is generally opportunistic and does not usually target individual species. Native language names for birds often group closely related species, with no separate names for species within these groups. Also, preferences for individual species differ greatly between villages and individual hunters. As a result, regions are hesitant to remove birds from the list until they are certain they are not taken. The list therefore contains some species that are taken infrequently and opportunistically, but this is still part of the subsistence tradition. The Co-Management Council initially decided to call this list ‘‘potentially harvested birds’’ versus ‘‘traditionally harvested birds’’ because a detailed written documentation of the customary and traditional use patterns for the 106 species listed had not yet been conducted. However, this terminology was leading to some confusion so the Service renamed the list ‘‘subsistence birds’’ to cover the birds open to harvest in 2003.

The ‘‘customary and traditional use’’ of a wildlife species has been defined in Federal regulations (50 CFR part 100.4) as a long-established, consistent pattern of use, incorporating beliefs and customs that have been transmitted from generation to generation. Much of the customary and traditional use information has not been documented in written form, but exists in the form of oral histories from elders, traditional stories, harvest methods taught to children, and traditional knowledge of the birds' natural history shared within a village or region. The only available empirical evidence of customary and traditional use of the harvested bird species comes from Alaska subsistence migratory bird harvest surveys, conducted by Service personnel and contractors and transferred to a computerized database. Due to difficulties in bird species identification, shorebird harvest information has been lumped into ‘‘large shorebird’’ and ‘‘small shorebird’’ categories. In reality, Alaska subsistence harvests are also conducted in this manner, generally with no targeting or even recognition of individual shorebird species in most cases. In addition, red-faced cormorants, trumpeter swans, Aleutian terns, whiskered auklets, short-eared owls and others have not been targeted in subsistence harvest questionnaires, so little or no numerical harvest data exists. Available summaries of subsistence harvest data include: Page and Wolf 1997; Trost and Drut 2001, 2002; Wentworth 1998; Wentworth and Wong 2001; and Wong and Wentworth 2001.

What Are Birds of Conservation Concern and How Do They Apply to Subsistence Harvest?

Birds of Conservation Concern (BCC) 2002 (FWS 2002) is the latest document in a continuing effort by the Service to assess and prioritize bird species for conservation purposes (FWS 1982, 1987, 1995; and U.S. Department of the Interior 1990). It identifies bird species at risk due to inherently small populations or restricted ranges, severe population declines, or imminent threats, and thus in need of increased conservation attention to maintain or stabilize populations. The legal authority for this effort is the Fish and Wildlife Conservation Act (FWCA) of 1980, as amended. The 1988 amendment (Pub. L. 100–653, Title VIII) to the FWCA requires the Secretary of the Interior (16 U.S.C. 2901–2912), through the Service, to ‘‘identify species, subspecies, and populations of all migratory nongame birds that, without additional conservation actions, are likely to become candidates for listing under the Endangered Species Act (ESA) of 1973, as amended (16 U.S.C. 1531–1543).’’

In actuality, and fortunately, few of the species on the BCC lists are in such a precarious state that they will have to be considered for listing as endangered or threatened in the near future. Our goal is to implement preventive management measures that will serve to keep these species off the endangered species list. Proactive conservation clearly is more cost-effective than the extensive recovery efforts required once a species is federally listed under the ESA. The BCC lists are intended to stimulate coordinated and collaborative proactive conservation actions (including research, monitoring, and management) among Federal, State, and private partners. By focusing attention on these highest priority species, the Service hopes to promote greater study and protection of the habitats and ecological communities upon which these species depend, thereby ensuring the future of healthy avian populations and communities (For more detailed information on the exact criteria used to select species for consideration and inclusion on the BCC lists, *see* FWS 2002).

Of the 106 species for which the Service proposes to establish regulations allowing subsistence hunting in Alaska, 22 are on BCC lists at one or more scales (*e.g.*, National, FWS Regions, or Bird Conservation Regions—Alaska). The Service considers one additional species (Trumpeter Swan) to be ''sensitive'' because of its small population size and limited breeding distribution in Alaska. Of the 22 species on BCC lists, 14 are technically considered ''gamebirds'' (as defined by bilateral migratory bird conventions with Canada and Mexico), although frameworks allowing sport hunting seasons have never been established for any of them in the 85-year history of the Migratory Bird Treaty Act. These species are included on the list of birds that could be hunted for subsistence at the request of the Co-management Council based on a continuing history of customary and traditional use, and the fact that they will continue to be taken for subsistence in the future. Although designation of these species by the Service as ''birds of conservation concern'' or ''sensitive'' does not automatically exclude them from consideration for subsistence hunting, we believe that it is incumbent upon the Service to make sure that appropriate conditions are in place to ensure that a limited subsistence harvest of these species will not worsen their conservation status.

The following 23 species are birds of conservation concern or considered sensitive for other reasons. We request public comments as to whether or not these bird species should be removed from the list of birds open for the spring/summer subsistence harvest in Alaska.

Family Gaviidae

Red-throated Loon (*Gavia stellata*)
Yellow-billed Loon (*Gavia adamsii*)

Family Phalacrocoracidae

Red-faced Cormorant (*Phalacrocorax urile*)

Family Anatidae

Trumpeter Swan (*Cygnus buccinator*)

Family Charadriidae

American Golden-Plover (*Pluvialis dominicus*)
Pacific Golden-Plover (*Pluvialis fulva*)

Family Haematopodidae

Black Oystercatcher (*Haematopus bachmani*)

Family Scolopacidae

Solitary Sandpiper (*Tringa solitaria*)
Upland Sandpiper (*Bartramia longicauda*)
Whimbrel (*Numenius phaeopus*)
Bristle-thighed Curlew (*Numenius tahitiensis*)
Hudsonian Godwit (*Limosa haemastica*)
Bar-tailed Godwit (*Limosa lapponica*)
Marbled Godwit (*Limosa fedoa*)
Black Turnstone (*Arenaria melanocephala*)
Red Knot (*Calidris canutus*)
Dunlin (*Calidris alpina*)
Buff-breasted Sandpiper (*Tryngites subruficollis*)

Family Laridae

Red-legged Kittiwake (*Rissa brevirostris*)
Arctic Tern (*Sterna paradisaea*)
Aleutian Tern (*Sterna aleutica*)

Family Alcidae

Whiskered Auklet (*Aethia pygmaea*)

Family Strigidae

Short-eared Owl (*Asio flammeus*)

In addition to whether or not these birds should be open for subsistence hunting, we specifically request information and comments from the public on the following four questions regarding the above list of bird species. Responses may reflect personal knowledge or opinion, or be based on a review of historical or contemporary documents and published literature.

1. What measurable impacts do you think a limited subsistence harvest would have on populations of these species?

2. Which bird species are more important in terms of food value and/or customary and traditional uses?

3. Apart from their designation as ''birds of conservation concern,'' are there particular reasons why subsistence harvest should be restricted or closed for any of these species?

4. In the event that subsistence hunting were allowed for some or all of these species, do you believe that certain conditions should be imposed to ensure that the population status of these species is maintained or improved? If so, what would you recommend?

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Wong, D. and C. Wentworth. 2001. Subsistence migratory bird harvest survey, Bristol Bay, 1995–1999. U.S. Fish Wildl. Serv., Migratory Bird Mgt. Div., Alaska Peninsula NWR, Togiak NWR., and Bristol Bay Native Assoc., Anchorage, AK.

Public Comments Solicited

The Department of the Interior's policy is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. If you wish to comment, you may submit your comments by any one of several methods. You may mail or fax comments to the address indicated under the caption **ADDRESSES.** You may hand-deliver comments to the address indicated under the caption **ADDRESSES.** Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. In some circumstances, we would also withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

You may inspect comments received on the proposed regulations during normal business hours at the Service's office in Anchorage, Alaska. We will consider, but possibly may not respond in detail to, each comment. We will summarize all comments received during the comment period and respond to them after the closing date in any final rules.

Because we conducted an extensive public involvement process prior to formulating these regulations, we are soliciting comments on this proposed rule for only 30 days. We need to finalize these regulations as soon as possible to open the first legal subsistence harvest in April 2003.

Statutory Authority

We derive our authority to issue these proposed regulations from the four migratory bird treaties with Canada, Mexico, Japan, and Russia, and from the Migratory Bird Treaty Act of 1918 (16 U.S.C. 703 *et seq.*), which implements the 1916 Convention, as amended, between the United States and Great Britain (for Canada) and other treaties for the protection of migratory birds. Specifically, these regulations are issued pursuant to 16 U.S.C. 712 (1), which authorizes the Secretary of the Interior to ''issue such regulations as may be necessary to assure that the taking of migratory birds and the collection of their eggs, by the indigenous inhabitants of the State of Alaska, shall be permitted for their own nutritional and other essential needs, as determined by the Secretary of the Interior, during seasons established so as to provide for the preservation and maintenance of stocks of migratory birds.''

Executive Order 12866

The E.O. 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this rule easier to understand, including answers to questions such as the following:

(1) Are the requirements in the rule clearly stated?

(2) Does the rule contain technical language or jargon that interferes with its clarity?

(3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, *etc.,*) aid or reduce its clarity?

(4) Would the rule be easier to understand if it were divided into more (but shorter) sections?

(5) Is the description of the rule in the ''Supplementary Information'' section of the preamble helpful in understanding the rule?

(6) What else could we do to make the rule easier to understand?

Send a copy of any comments that concern how we could make this rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street NW., Washington, DC 20240. You may also e-mail the comments to this address: *Exsec@ios.doi.gov.*

The Office of Management and Budget (OMB) has determined that this document is not a significant rule subject to OMB review under E.O. 12866.

a. This rule will not have an annual economic effect of $100 million or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. A cost-benefit and economic analysis is not required. This rule is administrative, technical, and procedural in nature, establishing the procedures for implementing spring and summer harvest of migratory birds as provided for in the amended Canada Treaty. The rule does not provide for new or additional hunting opportunities and therefore will have minimal economic or environmental impact.

This rule benefits those participants who engage in the subsistence harvest of migratory birds in Alaska in two identifiable ways: first, participants receive the consumptive value of the birds harvested and second, participants get the cultural benefit associated with the maintenance of a subsistence economy and way of life. The U.S. Fish and Wildlife Service can estimate the consumptive value for birds harvested under this rule but does not have a dollar value for the cultural benefit of maintaining a subsistence economy and way of life.

The economic value derived from the consumption of the harvested migratory birds has been estimated using the results of a paper by Robert J. Wolfe titled ''Subsistence Food Harvests in Rural Alaska, and Food Safety Issues,'' August 13, 1996.'' Using data from Wolfe's paper and applying it to the areas that will be included in this process, a maximum economic value of $6 million is determined. This is the estimated economic benefit of the consumptive part of this rule for participants in subsistence hunting. The cultural benefits of maintaining a subsistence economy and way of life can be of considerable value to the participants, and these benefits are not included in this figure.

b. This rule will not create inconsistencies with other agencies' actions. We are the Federal agency responsible for the management of migratory birds, coordinating with the State of Alaska's Department of Fish and Game on management programs within Alaska. The State of Alaska is a member of the Alaska Migratory Bird Co-management Council.

c. This rule will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. The rule does not affect entitlement programs.

d. This rule will not raise novel legal or policy issues. The subsistence harvest regulations will go through the same National regulatory process as the existing migratory bird hunting regulations in 50 CFR part 20.

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et. seq.*). An initial regulatory flexibility analysis is not required. Accordingly, a Small Entity Compliance Guide is not required. The rule legalizes a pre-existing subsistence activity, and the resources harvested will be consumed by the harvesters or persons within their local community.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act, as discussed in the E.O. 12866 section above.

a. This rule does not have an annual effect on the economy of $100 million or more. It will legalize and regulate a traditional subsistence activity. It will not result in a substantial increase in subsistence harvest or a significant change in harvesting patterns.

The commodities being regulated under this rule are migratory birds. This rule deals with legalizing the subsistence harvest of migratory birds and, as such, does not involve commodities traded in the marketplace. A small economic benefit from this rule derives from the sale of equipment and ammunition to carry out subsistence hunting. Most, if not all, businesses that sell hunting equipment in rural Alaska would qualify as small businesses. The U.S. Fish and Wildlife Service has no reason to believe that this rule will lead to a disproportionate distribution of benefits.

b. This rule will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. This rule does not deal with traded commodities and, therefore, does not have an impact on prices for consumers.

c. This rule does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This rule deals with the harvesting of wildlife for personal consumption. It does not regulate the marketplace in any way to generate effects on the economy or the ability of businesses to compete.

Unfunded Mandates Reform Act

We have determined and certify pursuant to the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et. seq.*) that this rule will not impose a cost of $100 million or more in any given year on local, State, or tribal governments or private entities. A statement containing the information required by this Act is therefore not necessary.

Participation on regional management bodies and the Co-management Council will require travel expenses for some Alaska Native organizations and local governments. In addition they will assume some expenses related to coordinating involvement of village councils in the regulatory process. Total coordination and travel expenses for all Alaska Native organizations are estimated to be less than $300,000 per year. In the Notice of Decision, 65 FR 16405, March 28, 2000, we identified 12 partner organizations to be responsible for administering the regional programs. When possible, we will make annual grant agreements available to the partner organizations to help offset their expenses. The Alaska Department of Fish and Game will incur expenses for travel to the Co-management Council meetings and to meetings of the regional management bodies. In addition, the State of Alaska will be required to provide technical staff support to each of the regional management bodies and to the Co-management Council. Expenses for the State's involvement may exceed $100,000 per year, but should not exceed $150,000 per year.

Paperwork Reduction Act

This rule has been examined under the Paperwork Reduction Act of 1995 and has been found to contain no information collection requirements. We are, however, beginning the process to request OMB approval of associated voluntary annual household surveys used to determine levels of subsistence take. We will publish a notice in the **Federal Register** in the near future requesting public comment on that information collection. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Federalism Effects

As discussed in the E.O. 12866 and Unfunded Mandates Reform Act sections above, this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment under Executive Order 13132. We are working with the State of Alaska on development of these regulations.

Civil Justice Reform—Executive Order 12988

In accordance with Executive Order 12988, the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and that it meets the requirements of section 3 of the Order.

Takings Implication Assessment

This rule is not specific to particular land ownership, but applies to the harvesting of migratory bird resources throughout Alaska. Therefore, in accordance with Executive Order 12630, this rule does not have significant takings implications.

Government-to-Government Relations With Native American Tribal Governments

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations With Native American Tribal Governments'' (59 FR 22951), and Executive Order 13175, 65 FR 67249 (November 6, 2000), concerning consultation and coordination with Indian Tribal Governments, we have consulted with Alaska tribes, evaluated the rule for possible effects on tribes or trust resources and have determined that there are no significant effects. This rule establishes procedures by which the individual tribes in Alaska will be able to become significantly involved in the annual regulatory process for spring and summer subsistence harvesting of migratory birds and their eggs. The rule will legalize the subsistence harvest for tribal members, as well as for other indigenous inhabitants.

Endangered Species Act Consideration

Prior to issuance of annual spring and summer subsistence regulations, we will consider provisions of the Endangered Species Act of 1973, as amended, (16 U.S.C. 1531–1543; hereinafter the Act) to ensure that harvesting is not likely to jeopardize the continued existence of any species designated as endangered or threatened or modify or destroy their critical habitats, and that it is consistent with conservation programs for those species. Consultations under section 7 of this Act conducted in connection with the environmental assessment for the annual subsistence take regulations may cause us to change these regulations.

National Environmental Policy Act Consideration

We previously determined that establishing the procedures for future development of subsistence harvest regulations does not require an environmental assessment because the impacts to the environment are negligible. We therefore filed a categorical exclusion dated April 30, 1999. Copies of the categorical exclusion are available at the address shown in the section of this document entitled **ADDRESSES.** An environmental assessment was prepared in September 2002 for the 2003 subsistence harvest regulations.

Energy Supply, Distribution or Use (Executive Order 13211)

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. Because this rule only allows for traditional subsistence harvest and improves conservation of migratory birds by allowing effective regulation of this harvest, it is not a significant regulatory action under Executive Order 12866. Consequently it is not expected to significantly affect energy supplies, distribution, and use. Therefore, this action is a not significant energy action under Executive Order 13211 and no Statement of Energy Effects is required.

List of Subjects

Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

Part 21

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

Part 92

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Subsistence, Treaties, Wildlife.

For the reasons set out in the preamble, we propose to amend title 50, chapter I, subchapters B and F, of the Code of Federal Regulations as follows:

PART 20—Migratory Bird Hunting

1. The authority citation for part 20 continues to read as follows:

Authority: 16 U.S.C. 703–712 and 742 a–j; Pub. L. 106–108.

2. Amend § 20.2 by adding paragraph (e) to read as follows:

§ 20.2 Relation to other provisions.

* * * * *

(e) Migratory Bird Subsistence Harvest in Alaska. The provisions of this part are not applicable to the migratory bird subsistence harvest in Alaska issued pursuant to part 92 unless specifically referenced in part 92 of this subchapter.

3. Amend § 20.22 by revising the existing paragraph to read as follows:

§ 20.22 Closed seasons.

No person may take migratory game birds during the closed season except as provided in parts 21 and 92 of this chapter.

§ 20.132 [Removed and Reserved]

4. Remove and reserve § 20.132.

PART 21—MIGRATORY BIRD PERMITS

5. The authority citation for part 21 continues to read as follows:

Authority: Pub. L. 95–616, 92 Stat. 3112 (16 U.S.C. 712(2)); Pub. L. 106–108.

6. Amend § 21.11 by revising the section to read as follows:

§ 21.11 General permit requirements.

No person may take, possess, import, export, transport, sell, purchase, barter, or offer for sale, purchase, or barter, any migratory bird, or the parts, nests, or eggs of such bird except as may be permitted under the terms of a valid permit issued pursuant to the provisions of this part and part 13, or as permitted by regulations in this part, or part 20 of this subchapter (the hunting regulations), or part 92 of subchapter F of this chapter (the spring/summer subsistence harvest regulations). Birds taken or possessed under this part in subsistence included areas of Alaska are subject to this part and not to part 92. Subsistence included areas are defined in § 92.5(a).

PART 92—MIGRATORY BIRD SUBSISTENCE HARVEST IN ALASKA

7. The authority for part 92 continues to read as follows:

Authority: 16 U.S.C. 703–712.

Subpart A—General Provisions

8. In subpart A amend § 92.4 by revising the definition for ''migratory bird'' to read as follows:

§ 92.4 Definitions.

* * * * *

Migratory bird, for the purposes of this part, means the same as defined in § 10.12 of this chapter. Species eligible to harvest are listed in § 92.32.

* * * * *

9. In subpart A amend § 92.5 by revising paragraphs (b) and (d) to read as follows:

§ 92.5 Who is eligible to participate?

* * * * *

(b) *Excluded areas.* Village areas located in Anchorage, the Matanuska-Susitna or Fairbanks North Star Boroughs, the Kenai Peninsula roaded area, the Gulf of Alaska roaded area, or Southeast Alaska generally do not qualify for a spring or summer harvest. Communities located within one of these areas may petition the Co-management Council through their designated regional management body for designation as a spring and summer subsistence harvest area. The petition must state how the community meets the criteria identified in paragraph (c) of this section. The Co-management Council will consider each petition and will submit to the U.S. Fish and Wildlife Service any recommendations to designate a community as a spring and summer subsistence harvest area. The U.S. Fish and Wildlife Service will publish any approved recommendations to designate a community as a spring and summer subsistence harvest area in subpart D of this part. All areas outside Alaska are ineligible.

* * * * *

(d) *Participation by permanent residents of excluded areas.* Immediate family members that are permanent residents of excluded areas may participate in the customary spring and summer subsistence harvest in a village's subsistence harvest area with the permission of the village council, where it is appropriate to assist indigenous inhabitants in meeting their nutritional and other essential needs or for the teaching of cultural knowledge to or by their immediate family members. Eligibility for participation will be developed and recommended by the Co-management Council and adopted or amended by regulations published in subpart D of this part.

10. In subpart A amend § 92.6 by revising the section to read as follows:

§ 92.6 Use and possession of migratory birds.

Harvest and possession of migratory birds must be done using nonwasteful taking. You may not take birds for purposes other than human consumption. You may not sell, offer for sale, purchase, or offer to purchase migratory birds, their parts, or their eggs taken under this part. Nonedible by-products of migratory birds taken for food may be used for other non-commercial purposes only by individuals qualified to possess those birds. You may possess migratory birds, their parts, and their eggs, taken under this part, only if you are an eligible person as determined in § 92.5.

Subpart B—Program Structure

11. In subpart B amend § 92.10 by revising paragraph (b)(1) to read as follows:

§ 92.10 Alaska Migratory Bird Co-Management Council.

* * * * *

(b) * * *

(1) The Federal and State governments will each seat one representative. The Federal representative will be appointed by the Alaska Regional Director of the U.S. Fish and Wildlife Service, and the State representative will be appointed by the Commissioner of the Alaska Department of Fish and Game. Regional partner organizations may seat 1 representative from each of the 12 regions identified in § 92.11(a).

* * * * *

12. In subpart B, amend § 92.11 by revising paragraphs (a) and (b) introductory text to read as follows:

§ 92.11 Regional management areas.

(a) *Regions identified.* To allow for maximum participation by residents of subsistence eligible areas, the Alaska Regional Director of the Service established 12 geographic regions based on common subsistence resource use patterns and the 12 Alaska Native Regional Corporation boundaries established under the Alaska Native Claims Settlement Act. Despite using the Alaska Native Regional Corporation boundaries, we are not working directly with the Regional Corporations in this program and are instead working with the Alaska Native nonprofit groups and local governments in those corresponding regions. You may obtain records and maps delineating the boundaries of the 12 regions from the U.S. Department of the Interior, Bureau of Land Management, Alaska State Office, 222 West 7th Ave., No. 13, Anchorage, AK 99513. The regions are identified as follows:

(1) Aleutian/Pribilof Islands;
(2) Kodiak Archipelago;
(3) Bristol Bay;
(4) Yukon/Kuskokwim Delta;
(5) Bering Strait/Norton Sound;
(6) Northwest Arctic;
(7) North Slope;
(8) Interior;
(9) Southeast;
(10) Gulf of Alaska;
(11) Upper Copper River; and
(12) Cook Inlet.

(b) *Regional partnerships.* The U.S. Fish and Wildlife Service will establish partner agreements with at least 1 partner organization in each of the 12 regions. The partner organization identified must be willing and able to coordinate the regional program on behalf of all subsistence hunters within that region. A regional partner will:

* * * * *

Subpart C—General Regulations Governing Subsistence Harvest

13. In subpart C, add § 92.20 to read as follows:

§ 92.20 Methods and means.

You may not use the following devices and methods to harvest migratory birds:

(a) Swivel guns, shotguns larger than 10 gauge, punt guns, battery guns, machine guns, fish hooks, poisons, drugs, explosives, or stupefying substances;

(b) Shooting from a sinkbox or any other type of low-floating device that affords the hunter a means of concealment beneath the surface of the water;

(c) Hunting from any type of aircraft;

(d) Taking waterfowl and other species using live birds as decoys, except for auklets on Diomede Island (Use of live birds as decoys is a customary and traditional means of harvesting auklets on Diomede Island);

(e) Hunting with the aid of recorded bird calls;

(f) Using any type of vehicle, aircraft, or boat for the purpose of concentrating, driving, rallying, or stirring up of any migratory bird, except boats may be used to position a hunter;

(g) The possession or use of lead or other toxic shot while hunting all migratory birds (Approved nontoxic shot types are listed in § 20.21(j) of this subchapter);

(h) Shooting while on or across any road or highway.

Subpart D—Annual Regulations Governing Subsistence Harvest

14. In subpart D, amend § 92.30 by adding an introductory paragraph to read as follows:

§ 92.30 General overview of regulations.

These regulations establish a spring/summer migratory bird subsistence harvest in Alaska. The regulations list migratory bird species that are authorized for harvest, species that are not authorized for harvest, season dates, and dates for a 30-day closure to protect nesting birds. The Co-Management Council will review and, if necessary, modify these harvest regulations on an annual basis, working within the schedule of the Federal late season waterfowl regulations.

* * * * *

15. In subpart D, add §§ 92.31 through 92.33 to read as follows:

§ 92.31 Migratory bird species not authorized for subsistence harvest.

(a) You may not harvest birds or gather eggs from the following species:

(1) Spectacled Eider, *Somateria fischeri.*

(2) Steller's Eider, *Polysticta stelleri.*

(3) Emperor Goose, *Chen canagica.*

(4) Aleutian Canada Goose, *Branta canadensis leucopareia*—Semidi Islands only.

(b) In addition, you may not gather eggs from the following species:

(1) Cackling Canada Goose, *Branta canadensis minima*

(2) Black Brant, *Branta bernicla nigricans*—in the Yukon/Kuskokwim Delta and North Slope regions only.

§ 92.32 Subsistence migratory bird species.

You may harvest birds or gather eggs from the following species, listed in taxonomic order, within all open regions. When birds are listed only to the species level, assume all subspecies existing in Alaska are open to harvest.

Family Gaviidae

Red-throated Loon (*Gavia stellata*)
Arctic Loon (*Gavia arctica*)
Pacific Loon (*Gavia pacifica*)
Common Loon (*Gavia immer*)
Yellow-billed Loon (*Gavia adamsii*)

Family Podicipedidae

Horned Grebe (*Podiceps auritus*)
Red-necked Grebe (*Podiceps grisegena*)

Family Procellariidae

Northern Fulmar (*Fulmarus glacialis*)

Family Phalacrocoracidae

Double-crested Cormorant (*Phalacrocorax auritus*)
Red-faced Cormorant (*Phalacrocorax urile*)
Pelagic Cormorant (*Phalacrocorax pelagicus*)

Family Anatidae

Greater White-fronted Goose (*Anser albifrons*)
Snow Goose (*Chen caerulescens*)
Lesser Canada Goose (*Branta canadensis parvipes*)
Taverner's Canada Goose (*Branta canadensis taverneri*)
Aleutian Canada Goose (*Branta canadensis leucopareia*)—except in the Semidi Islands
Cackling Canada Goose (*Branta canadensis minima*)—except no egg gathering is permitted
Black Brant (*Branta bernicla nigricans*)—except no egg gathering is permitted in the Yukon/Kuskokwim Delta and the North Slope Regions
Trumpeter Swan (*Cygnus buccinator*)
Tundra Swan (*Cygnus columbianus*)
Gadwall (*Anas strepera*)
Eurasian Wigeon (*Anas penelope*)
American Wigeon (*Anas americana*)
Mallard (*Anas platyrhynchos*)
Blue-winged Teal (*Anas discors*)
Northern Shoveler (*Anas clypeata*)
Northern Pintail (*Anas acuta*)
Green-winged Teal (*Anas crecca*)
Canvasback (*Aythya valisineria*)
Redhead (*Aythya americana*)
Ring-necked Duck (*Aythya collaris*)
Greater Scaup (*Aythya marila*)
Lesser Scaup (*Aythya affinis*)
King Eider (*Somateria spectabilis*)
Common Eider (*Somateria mollissima*)
Harlequin Duck (*Histrionicus histrionicus*)
Surf Scoter (*Melanitta perspicillata*)
White-winged Scoter (*Melanitta fusca*)
Black Scoter (*Melanitta nigra*)
Long-tailed Duck (*Clangula hyemalis*)
Bufflehead (*Bucephala albeola*)
Common Goldeneye (*Bucephala clangula*)
Barrow's Goldeneye (*Bucephala islandica*)
Hooded Merganser (*Lophodytes cucullatus*)

Common Merganser (*Mergus merganser*)
Red-breasted Merganser (*Mergus serrator*)

Family Gruidae

Sandhill Crane (*Grus canadensis*)

Family Charadriidae

Black-bellied Plover (*Pluvialis squatarola*)
American Golden-Plover (*Pluvialis dominicus*)
Pacific Golden-Plover (*Pluvialis fulva*)
Common Ringed Plover (*Charadrius hiaticula*)

Family Haematopodidae

Black Oystercatcher (*Haematopus bachmani*)

Family Scolopacidae

Greater Yellowlegs (*Tringa melanoleuca*)
Lesser Yellowlegs (*Tringa flavipes*)
Solitary Sandpiper (*Tringa solitaria*)
Wandering Tattler (*Heteroscelus incanus*)
Spotted Sandpiper (*Actitis macularia*)
Upland Sandpiper (*Bartramia longicauda*)
Whimbrel (*Numenius phaeopus*)
Bristle-thighed Curlew (*Numenius tahitiensis*)
Hudsonian Godwit (*Limosa haemastica*)
Bar-tailed Godwit (*Limosa lapponica*)
Marbled Godwit (*Limosa fedoa*)
Ruddy Turnstone (*Arenaria interpres*)
Black Turnstone (*Arenaria melanocephala*)
Red Knot (*Calidris canutus*)
Semipalmated Sandpiper (*Calidris pusilla*)
Western Sandpiper (*Calidris mauri*)
Least Sandpiper (*Calidris minutilla*)
Baird's Sandpiper (*Calidris bairdii*)
Sharp-tailed Sandpiper (*Calidris acuminata*)
Dunlin (*Calidris alpina*)
Buff-breasted Sandpiper (*Tryngites subruficollis*)
Long-billed Dowitcher (*Limnodromus scolopaceus*)
Common Snipe (*Gallinago gallinago*)
Red-necked phalarope (*Phalaropus lobatus*)
Red phalarope (*Phalaropus fulicaria*)

Family Laridae

Pomarine Jaeger (*Stercorarius pomarinus*)
Parasitic Jaeger (*Stercorarius parasiticus*)
Long-tailed Jaeger (*Stercorarius longicaudus*)
Bonaparte's Gull (*Larus philadelphia*)
Mew Gull (*Larus canus*)
Herring Gull (*Larus argentatus)*
Slaty-backed Gull (*Larus schistisagus*)
Glaucous-winged Gull (*Larus glaucescens*)
Glaucous Gull (*Larus hyperboreus*)
Sabine's Gull (*Xema sabini*)
Black-legged Kittiwake (*Rissa tridactyla*)
Red-legged Kittiwake (*Rissa brevirostris*)
Ivory Gull (*Pagophila eburnea*)
Arctic Tern (*Sterna paradisaea*)
Aleutian Tern (*Sterna aleutica*)

Family Alcidae

Common Murre (*Uria aalge*)
Thick-billed Murre (*Uria lomvia*)
Black Guillemot (*Cepphus grylle*)
Pigeon Guillemot (*Cepphus columba*)
Cassin's Auklet (*Ptychoramphus aleuticus*)
Parakeet Auklet (*Aethia psittacula*)
Least Auklet (*Aethia pusilla*)
Whiskered Auklet (*Aethia pygmaea*)
Crested Auklet (*Aethia cristatella*)
Rhinoceros Auklet (*Cerorhinca monocerata*)
Horned Puffin (*Fratercula corniculata*)
Tufted Puffin (*Fratercula cirrhata*)

Family Strigidae

Great Horned Owl (*Bubo virginianus*)
Snowy Owl (*Nyctea scandiaca*)
Northern Hawk Owl (*Surnia ulula*)
Short-eared Owl (*Asio flammeus*)

§ 92.33 Region-specific regulations.

The season dates for the 2003 season for eight subsistence regions are as follows:

(a) Aleutian/Pribilof Islands Region.

(1) Northern Unit (Pribilof Islands):

(i) Season: April 2—June 30.

(ii) Closure: July 1—August 31.

(2) Central Unit (Aleut Region's eastern boundary on the Alaska Peninsula westwards to Unalaska Island):

(i) Season: April 2–June 15 and July 16–August 31.

(ii) Closure: June 16–July 15.

(3) Western Unit (Umnak Island west to Attu Island):

(i) Season: April 2–July 15 and August 16–August 31.

(ii) Closure: July 16–August 15.

(b) Yukon/Kuskokwim Delta Region.

(1) Season: April 2–August 31.

(2) Closure: 30-day closure dates to be announced by the Alaska Regional Director or his designee, after consultation with local subsistence users and the region's Waterfowl Conservation Committee. This 30-day period will occur between June 1 and August 15 of each year. A press release announcing the actual closure dates will be forwarded to regional newspapers and radio and television stations and posted in village post offices and stores.

(c) Bristol Bay Region.

(1) Season: April 2–June 14 and July 16–August 31.

(2) Closure: June 15–July 15.

(d) Bering Strait/Norton Sound Region.

(1) Stebbins/St. Michael Area (Point Romanof to Canal Point):

(i) Season: April 15–June 14 and July 16–August 31.

(ii) Closure: June 15–July 15.

(2) Remainder of the region:

(i) Season: April 2–June 14 and July 16–August 31 for waterfowl; April 2–July 19 and August 21–August 31 for all other birds.

(ii) Closure: June 15–July 15 for waterfowl; July 20–August 20 for all other birds.

(e) Kodiak Archipelago Region.

(1) Season: April 2–June 20 and July 22–August 31, egg gathering: May 1–June 20.

(2) Closure: June 21–July 21.

(f) Northwest Arctic Region.

(1) Season: April 2–August 31 (in general); waterfowl egg gathering May 20–June 9; seabird egg gathering July 3–July 12; molting/non-nesting waterfowl July 1–July 31.

(2) Closure: June 10–August 14, except for the taking of seabird eggs and molting/non-nesting waterfowl as provided in paragraph (f)(1) of this section.

(g) North Slope Region.

(1) Southern Unit (Pt. Hope to Wainwright, along the Chuckchi coast, south and east to Atqasuk and Anaktuvuk Pass):

(i) Season: April 2–June 19 and July 20–August 31 for waterfowl; April 2–June 29 and July 30–August 31 for seabirds.

(ii) Closure: June 20–July 19 for waterfowl, June 30–July 29 for seabirds.

(2) Northern Unit (Barrow to Nuiqsut):

(i) Season: April 2–June 15 and July 16–August 31.

(ii) Closure: June 16–July 15.

(3) Eastern Unit (East of Nuiqsut):

(i) Season: April 2–June 19 and July 20–August 31.

(ii) Closure: June 20–July 19.

(h) Interior Region.

(1) Season: April 2–June 14 and July 16–August 31; egg gathering May 1–June 14

(2) Closure: June 15–July 15.

Dated: January 31, 2003.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 03–3235 Filed 2–6–03; 1:29 pm]

BILLING CODE 4310–55–P

Notices

Federal Register

Vol. 68, No. 27

Monday, February 10, 2003

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Doc. No. LS–03–01]

Request for Extension and Revision of a Currently Approved Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces the Agricultural Marketing Service's (AMS) intention to request an extension of and revision to the currently approved collections for 7 CFR part 54—Meats, Prepared Meats, and Meat Products (Grading, Certification, and Standards), which includes Form LS–313, ''Application for Service'' and Form LS–315, ''Application for Commitment Grading or Certification Service.''

DATES: Comments on this notice must be received on or before April 11, 2003.

ADDRESSES: Send written comments to Larry R. Meadows, Chief; USDA, AMS, LS, MGC; STOP 0248, Room 2628–S; 1400 Independence Avenue, SW., Washington, DC 20250–0248. Comments will be available for public inspection at the above address during regular business hours. Comments may also be submitted by e-mail to *Larry.Meadows@usda.gov* or by facsimile to (202) 690–4119. All comments should reference the docket number (LS–03–01), the date, and the page number of this issue of the **Federal Register**. All responses to this notice will be summarized and included in the request for OMB approval.

SUPPLEMENTARY INFORMATION:

Title: 7 CFR part 54—Meats, Prepared Meats, and Meat Products (Grading, Certification, and Standards).

OMB Number: 0581–0124.

Expiration Date of Approval: September 30, 2003.

Type of Request: Extension and revision of a currently approved collection of information.

Abstract: The application for meat grading and certification services requests Department of Agriculture employees to perform such services in the requesting establishment. The information contained on the applications constitutes an agreement between USDA and the requesting establishment.

The Agricultural Marketing Act of 1946, as amended, authorizes the Secretary of Agriculture to provide voluntary Federal meat grading and certification services that facilitate the marketing of meat and meat products. The Meat Grading and Certification (MGC) Branch provides these services pursuant to 7 CFR part 54—Meats, Prepared Meats, and Meat Products (Grading, Certification, and Standards).

Due to the voluntary nature of grading and certification services, 7 CFR part 54 contains provisions for the collection of fees from users of MGC Branch services that as nearly as possible are equal to the cost of providing the requested services. Applicants (individual or businesses with financial interest in the product) may request MGC Branch services through either submission of Form LS–313 or Form LS–315.

Congress did not specifically authorize this collection of information, but completion and submission of Form LS–313 or Form LS–315 serves as an agreement by the requester to pay for services provided.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .0178 hours per response.

Respondents: Livestock and meat industry or other for-profit businesses.

Estimated Number of Respondents: 715 respondents.

Estimated Number of Responses per Respondent: 16 responses.

Estimated Total Annual Burden on Respondents: 212.40 hours.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: Larry R. Meadows, Chief, Meat Grading and Certification Branch, telephone (202) 720–1246, facsimile 202–690–4119, or e-mail at *Larry.Meadows@usda.gov.*

Dated: February 4, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03–3116 Filed 2–7–03; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 02–103–2]

Public Meeting; Veterinary Biologics

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of cancellation of meeting.

SUMMARY: We are advising producers and users of veterinary biologics, and other interested individuals, that our planned 12th public meeting on veterinary biologics, which was scheduled to be held March 31 through April 2, 2003, is canceled.

FOR FURTHER INFORMATION CONTACT: Dr. Richard E. Hill, Jr., Director, Center for Veterinary Biologics, Veterinary Services, APHIS, 510 South 17th Street, Suite 104, Ames, IA 50010–8197; phone (515) 232–5785, fax (515) 232–7120, or e-mail *CVB@aphis.usda.gov.*

SUPPLEMENTARY INFORMATION: In a document published in the **Federal Register** on November 26, 2002 (67 FR 70714, Docket No. 02–103–1), we gave notice that we would be holding a public meeting March 31 through April 2, 2003, in Ames, IA. The purpose of the meeting was to discuss regulatory and policy issues related to the manufacture, distribution, and use of veterinary biological products. Due to an outbreak of exotic Newcastle disease in commercial and non-commercial poultry flocks in Southern California and Nevada, Center for Veterinary Biologics personnel have been detailed to those States to assist with efforts to control the spread of the outbreak, and this has interfered with our ability to finalize the meeting agenda. We are, therefore, canceling the meeting that had been scheduled for March 31 through April 2, 2003. We regret any inconvenience caused by this cancellation.

Done in Washington, DC this 4th day of February 2003.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 03–3180 Filed 2–7–03; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF INTERIOR

Bureau of Land Management

DEPARTMENT OF AGRICULTURE

Forest Service

[OR–930–1610–PB–LITI; HAG03–0050]

Notice of Intent To Prepare a Supplemental Environmental Impact Statement To Amend Land and Resource Management Plans in Southwest Oregon for Management of Port-Orford-Cedar

AGENCIES: Bureau of Land Management, USDI and Forest Service, USDA.

ACTION: Notice of intent and initiation of public scoping.

SUMMARY: The Bureau of Land Management (BLM) and Forest Service are initiating work on a Supplemental Environmental Impact Statement (SEIS) to consider management alternatives for Port-Orford-Cedar in the Oregon portion of its natural range in southwestern Oregon and northwestern California. The SEIS is a joint effort by the Oregon/ Washington BLM and the Pacific Northwest Region of the Forest Service, with BLM as the lead agency. The Pacific Southwest Region of the Forest Service is a cooperator. Specific administrative units include the Coos Bay, Medford, and Roseburg District of the BLM and the Siskiyou, Six Rivers, Klamath, and Shasta-Trinity National Forests. Additional cooperators may be identified through the scoping process. The SEIS will respond to analysis deficiencies identified in March, 2002 by the United States Court of Appeals for the Ninth Circuit relating to a District Court decision in Kern vs. U.S. Bureau of Land Management, 284 F.3d 1062 (9th Cir. 2002). This decision concluded that analysis of cumulative effects of the current management guidelines were inadequate for the Sandy-Remote Environmental Assessment because it did not extend to the entire range of Port-Orford-Cedar. The SEIS will develop alternative management strategies for the Oregon portion of the species range and analyze effects of those strategies throughout the entire natural range of the species.

The SEIS will amend the land management plan for the Siskiyou National Forest and the resource management plans for the Coos Bay, Medford, and Roseburg Districts of the Bureau of Land Management. The BLM will work collaboratively with interested parties to identify the management decisions that are best suited to local, regional, and national needs and concerns. The SEIS will fulfill the needs and obligations set forth by the National Environmental Policy Act (NEPA), the Federal Land Policy and Management Act (FLPMA), and BLM and Forest Service management policies.

DATES: This notice initiates the public scoping process. Public scoping will be used to identify interested and affected individuals and groups, and to identify issues associated with the management of Port-Orford-Cedar. Briefing materials are available on line at *http://www.or.blm.gov/planning/Port-Orford-Cedar_SEIS/.* Comments concerning the scope of the analysis should be received 30 days from publication of this notice in the **Federal Register**. No formal public scoping meetings are scheduled, but may be scheduled if there is sufficient interest. Public scoping meetings will be announced in local newspapers and at *http://www.or.blm.gov/planning/Port-Orford-Cedar_SEIS/* at least 15 days prior to the event. Early participation is encouraged and will help determine the future management of Port-Orfort-Cedar on public lands in California and Oregon. In addition to the ongoing public participation process, formal opportunities for public participation will be provided through comment on the alternatives and upon publication of the BLM draft RMP/EIS.

ADDRESSES: Written comments should be sent to the Port-Orford-Cedar EIS Team, PO Box 2965, Portland, OR 97208. Comments may be submitted electronically to the following e-mail address: *orpoceis@or.blm.gov.* Comments, including names and street addresses of respondents, will be available for public review at the Oregon State Office, BLM reading room, 333 SW., 1st Avenue, Portland, OR 97204, and may be published as part of the EIS. If you wish to withhold your name or address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses, submitted on official letterheads, and from individuals identifying themselves as representatives or officials of organization or businesses, will be made available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: Ken Denton, Bureau of Land Management, Port-Orford-Cedar EIS Team, PO Box 2965, Portland, OR 97208.

SUPPLEMENTARY INFORMATION: A root disease, *Phytophthora lateralis,* currently infects Port-Orford-Cedar. Research shows the rate of spread of the root disease is linked, at least in part, to transport of spore-infected soil by human and other vectors. Water-borne spores then readily spread the disease down slope and down stream. The participating agencies believe, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of a draft EIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft EIS stage but that are not raised until after completion of the final EIS may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the agencies at a time when it can meaningfully consider them and respond to them in the final EIS.

Current BLM management direction requires all management activities within the range of Port-Orford-Cedar conform to guidelines described in the Port-Orford Cedar Management Policies.

These Policies are designed to mitigate damage caused by *Phytophthora lateralis.*

Current Forest Service management direction requires all management activities within the range of Port-Orford-Cedar conform to guidelines described in the Siskiyou Forest Plan in Oregon and the Six Rivers, Klamath, and Shasta-Trinity Forest Plans in California.

The responsible official for the Forest Service is the Pacific Northwest Regional Forester.

The responsible official for the Bureau of Land Management is the Oregon/Washington State Director.

Charles Wassinger,

Acting State Director, Bureau of Land Management.

Richard W. Sowa,

Acting Regional Forester, U.S. Forest Service, Region 6.

[FR Doc. 03–3172 Filed 2–7–03; 8:45 am]

BILLING CODE 4310–33–P; 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Resource Advisory Committee Meeting

AGENCY: Lassen Resource Advisory Committee, Susanville, California, USDA Forest Service.

ACTION: Notice of the meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act (Public Law 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393) the Lassen National Forest's Lassen County Resource Advisory Committee will meet Thursday, February 13, 2003, in Susanville, California for a business meeting. The meetings are open to the public.

SUPPLEMENTARY INFORMATION: The business meeting February 13, 2003 begins at 9 a.m., at the Lassen National Forest Headquarters Office, Caribou Conference Room, 2550 Riverside Drive, Susanville, CA 96130. Agenda topics will include: Review previous meeting minutes and approve, Approve Meeting Agenda, Review previous meeting minutes and approve, Discuss attendance of 6th Annual National Forest Counties & School Coalition Conference March 28–30 in Reno, Review Workshop Results, Use Rating System with Submitted Proposals and Review Proposals. Public Comment Time will also be set aside for public comments at the end of the meeting.

FOR FURTHER INFORMATION CONTACT: Robert Andrews, Eagle Lake District Ranger and Designated Federal Officer, at (530) 257–4188; or RAC Coordinator, Heidi Perry, at (530) 252–6604.

Heidi L. Perry,

Acting Forest Supervisor.

[FR Doc. 03–3131 Filed 2–7–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570–853]

Bulk Aspirin from the People's Republic of China; Final Results of Antidumping Duty Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Antidumping Duty Review.

SUMMARY: On August 7, 2002, the Department of Commerce published the preliminary results of the administrative review of the antidumping duty order on bulk aspirin from the People's Republic of China. We gave interested parties an opportunity to comment on the preliminary results. Based upon our analysis of the comments received, we have made changes to the margin calculations presented in the final results of the review. We find that bulk aspirin from the People's Republic of China was not sold in the United States below normal value during the period of review.

EFFECTIVE DATE: February 10, 2003.

FOR FURTHER INFORMATION CONTACT: Julie Santoboni or Cole Kyle, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–4194 or (202) 482–1503, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 7, 2002, the Department of Commerce ("the Department") published in the **Federal Register** the preliminary results of its administrative review of bulk acetylsalicylic acid, commonly referred to as bulk aspirin, from the People's Republic of China ("PRC") (*Bulk Aspirin from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Changed Circumstances Review*, 67 FR 51167 (August 7, 2002) ("*Preliminary Results*")).

Since the *Preliminary Results*, the following events have occurred: We received a case brief from the petitioner, Rhodia, Inc. ("petitioner"), on September 6, 2002. We received rebuttal briefs from the respondents, Shandong Xinhua Pharmaceutical Co., Ltd. ("Shandong") and Jilin Henghe Pharmaceutical Company Ltd. ("Jilin"), on September 13, 2002. On October 25, 2002, the Department of Commerce published the final results of the changed circumstances review of bulk aspirin from the PRC, finding that Jilin Henghe Pharmaceutical is the successor-in-interest to Jilin Pharmaceutical Company Ltd. and Jilin Pharmaceutical Import and Export Corporation (*see Bulk Aspirin from the People's Republic of China: Final Results of Changed Circumstances Review*, 67 FR 65537 (October 25, 2002)).

The Department has now completed this antidumping duty administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the "Act").

Scope of Order

The product covered by this review is bulk acetylsalicylic acid, commonly referred to as bulk aspirin, whether or not in pharmaceutical or compound form, not put up in dosage form (tablet, capsule, powders or similar form for direct human consumption). Bulk aspirin may be imported in two forms, as pure ortho-acetylsalicylic acid or as mixed ortho-acetylsalicylic acid. Pure ortho-acetylsalicylic acid can be either in crystal form or granulated into a fine powder (pharmaceutical form). This product has the chemical formula $C_9H_8O_4$. It is defined by the official monograph of the United States Pharmacopoeia ("USP") 23. It is classified under the Harmonized Tariff Schedule of the United States ("HTSUS") subheading 2918.22.1000.

Mixed ortho-acetylsalicylic acid consists of ortho-acetylsalicylic acid combined with other inactive substances such as starch, lactose, cellulose, or coloring materials and/or other active substances. The presence of other active substances must be in concentrations less than that specified for particular nonprescription drug combinations of bulk aspirin and active substances as published in the *Handbook of Nonprescription Drugs*, eighth edition, American Pharmaceutical Association. This product is classified under HTSUS subheading 3003.90.0000. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

Period of Review

The period of review (''POR'') is July 6, 2000 through June 30, 2001.

Comparisons

We calculated export price and normal value based on the same methodology used in the Preliminary Results with the following exceptions:

- We have valued certain inputs using domestic prices in India rather than import prices;
- We are no longer using Indian Chemical Weekly (''ICW'') import prices in our calculation of factor values;
- We adjusted the valuation of certain surrogate inputs in order to make them contemporaneous with the POR;
- We relied solely on the overhead and SG&A ratios from the Indian surrogate producer Alta Laboratories;
- We have recalculated Shandong's overhead ratio as a percentage of materials and energy, rather than materials, energy and labor;
- Pursuant to section 351.408(c)(3) of the Department's regulations, we valued labor using the recently updated regression-based wage rate for the PRC published by Import Administration on its website. The revised PRC estimated average hourly wage rate for 2000 is $0.84 per hour. *See www.ia.ita.doc.gov/wages/00wages/00wages.htm*;
- For Jilin, we revised reported payment dates, imputed credit expenses, and quantities, where appropriate, for certain U.S. sales; and
- We corrected a ministerial error.

For a complete discussion of these changes see the February 3, 2003, ''Issues and Decision Memorandum for the Final Results of the Antidumping Duty Administrative Review of Bulk Aspirin from the People's Republic of China'' (''*Decision Memorandum*''), the February 3, 2003, company-specific calculation memorandum, and the February 3, 2003, Factors of Production Memorandum.

Analysis of Comments Received

All issues raised in the petitioner's case brief are addressed in the *Decision Memorandum* which is hereby adopted by this notice. Attached to this notice as an appendix is a list of the issues which the petitioner has raised and to which we have responded in the *Decision Memorandum*. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in the Central Records Unit, Room B-099 of the Department. In addition, a complete version of the *Decision Memorandum* can be accessed directly on the Web at *http://ia.ita.doc.gov/frn/summary/list.htm*. The paper copy and electronic version of the *Decision Memorandum* are identical in content.

Final Results of Review

We determine that the following dumping margins exist for the period July 6, 2000, through June 30, 2001:

Exporter/manufacture	Weighted-average margin percentage
Shandong Xinhua Pharmaceutical Co., Ltd. ..	0.00
Jilin Henghe Pharmaceutical Company Ltd.	0.04 (*de minimis*)

Assessment Rates

In accordance with 19 CFR 351.212(b)(1), we have calculated importer (or customer)-specific assessment rates for the merchandise subject to this review. To determine whether the duty assessment rates were *de minimis*, in accordance with the requirement set forth in 19 CFR 351.106(c)(2), we calculated importer (or customer)-specific ad valorem rates by aggregating the dumping margins calculated for all U.S. sales to that importer (or customer) and dividing this amount by the total value of the sales to that importer (or customer). Where an importer (or customer)-specific *ad valorem* rate was greater than *de minimis*, we calculated a per unit assessment rate by aggregating the dumping margins calculated for all U.S. sales to that importer (or customer) and dividing this amount by the total quantity sold to that importer (or customer).

All other entries of the subject merchandise during the POR will be liquidated at the antidumping duty rate in place at the time of entry.

The Department will issue appropriate assessment instructions directly to the Customs Service within 15 days of publication of these final results of review.

Cash Deposit Requirements

The following deposit rates will be effective upon publication of these final results for all shipments of bulk aspirin from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date of this notice, as provided for by section 751(a)(1) of the Act:(1) for Shandong and Jilin, which have separate rates, no antidumping duty deposit will be required; (2) for a company previously found to be entitled to a separate rate and for which no review was requested, the cash deposit rate will be the rate established in the most recent review of that company; (3) for all other PRC exporters the cash deposit rate will be 144.02 percent, the PRC-wide rate established in the less than fair value investigation; and (4) for non-PRC exporters of subject merchandise from the PRC, the cash deposit rate will be the rate applicable to the PRC supplier of that exporter. These deposit rates shall remain in effect until publication of the final results of the next administrative review.

Notification to Importers

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

Notification Regarding APOs

This notice also serves as a reminder to parties subject to administrative protective orders (''APO'') of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this determination and notice in accordance with sections section 751(a)(3) and 777(i) of the Act.

Dated: February 3, 2003.

Faryar Shirzad,

Assistant Secretary for Import Administration.

APPENDIX

List of Comments in the Issues and Decision Memorandum

Comment 1: Use of Import Prices v. Domestic Prices in India to Value Certain Inputs

Comment 2: Adjustment of Overhead and SG&A Ratios to Account for Different Levels of Integration

Comment 3: Exclusion of Labor in the Calculation of the Overhead Ratio and Reclassification of R&D Expenses

Comment 4: Removal of Excise Tax from Alta's Reported Material Costs for the Calculation of Overhead and SG&A Ratios
Comment 5: Other Adjustments to the Overhead and SG&A Ratios
Comment 6: Inflation of Labor Rates
Comment 7: Valuation of a Proprietary Input for Shandong
Comment 8: Shandong's Usage of Acetic Anhydride

[FR Doc. 03–3284 Filed 2–7–03; 8:45 am]
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DEPARTMENT OF COMMERCE

International Trade Administration

[A-570–847]

Persulfates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Antidumping Duty Administrative Review.

SUMMARY: On August 6, 2002, the Department of Commerce published the preliminary results of the 2000–2001 administrative review of the antidumping duty order on persulfates from the People's Republic of China. This review covers one manufacturer/exporter of the subject merchandise to the United States. The merchandise covered by this order are persulfates, including ammonium, potassium, and sodium persulfates. The period of review is July 1, 2000, through June 30, 2001.

Based on our analysis of the comments received, we have made certain changes in the margin calculations. In addition, because updated information now exists, we have made a change in the margin calculation for Ai Jian with respect to the surrogate value for labor. *See* the section entitled ''Changes Since the Preliminary Results'' listed below. The final weighted-average dumping margins are listed below in the section entitled ''Final Results of the Review.''

EFFECTIVE DATE: February 10, 2003.

FOR FURTHER INFORMATION CONTACT: Mike Strollo, AD/CVD Enforcement Group I, Office II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–0629.

SUPPLEMENTARY INFORMATION:

Background

On August 6, 2002, the Department published the preliminary results of the 2000–2001 administrative review of the antidumping duty order on persulfates from the People's Republic of China (PRC). *See Persulfates from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review, and Partial Rescission of Administrative Review*, 67 FR 50866 (Aug. 6, 2002) (*Preliminary Results*). This review covers one exporter, Shanghai Ai Jian Import & Export Corporation (Ai Jian), and its affiliated manufacturer, Shanghai Ai Jian Reagent Works.

We invited interested parties to comment on the preliminary results of review. The Department has conducted this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of Review

The products covered by this review are persulfates, including ammonium, potassium, and sodium persulfates. The chemical formula for these persulfates are, respectively, $(NH_4)_2S_2O_8$, $K_2S_2O_8$, and $Na_2S_2O_8$. Ammonium and potassium persulfates are currently classifiable under subheading 2833.40.60 of the *Harmonized Tariff Schedule of the United States* (HTSUS). Sodium persulfate is classifiable under HTSUS subheading 2833.40.20. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this review is dispositive.

Separate Rates

Ai Jian has requested a separate, company-specific antidumping duty rate. In our preliminary results, we found that Ai Jian had met the criteria for the application of a separate antidumping duty rate. *See Preliminary Results*, 67 FR at 50867. We have not received any other information since the preliminary results which would warrant reconsideration of our separate rates determination with respect to this company. We therefore determine that Ai Jian should be assigned an individual dumping margin in this administrative review.

Analysis of Comments Received

All issues raised in the case briefs by parties to this administrative review are addressed in the ''Issues and Decision Memorandum'' (Decision Memo) from Susan Kuhbach, Acting Deputy Assistant Secretary, Group I, to Faryar Shirzad, Assistant Secretary for Import Administration, dated February 3, 2003, which is adopted by this notice. A list of the issues which parties have raised and to which we have responded, all of which are in the Decision Memo, is attached to this notice as an Appendix. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum, which is on file in the Central Records Unit in Room B-099 of the main Commerce Building.

In addition, a complete version of the Decision Memo can be accessed directly on the Web at *http://ia.ita.doc.gov*. The paper copy and electronic version of the Decision Memo are identical in content.

Changes Since the Preliminary Results

For purposes of the final results, we have made certain changes in the margin calculation for Ai Jian. For a discussion of these changes, see the ''Margin Calculations'' section of the Decision Memo.

• We revalued labor based on the regression-based wage rate for 2000 in accordance with 19 CFR 351.408(c)(3);
• We revised the surrogate value for wood pallets using Indian import statistics for the period July 2000 through June 2001;
• We based factory overhead (FOH), SG&A expenses, and profit on the financial statements of Gujarat alone, rather than calculating these expenses as an average of the experience of Calibre and Gujarat;
• We adjusted the calculation of the surrogate FOH ratio for Gujarat by excluding the cost of traded goods from the denominator of the ratio; and
• We adjusted the calculation of the surrogate SG&A ratio for Gujarat. We excluded movement expenses originally included in the cost of manufacture used as the denominator for the surrogate SG&A ratio, as well as certain interest expenses used to offset financing costs.

Final Results of the Review

We determine that the following percentage weighted-average margin exists for the period July 1, 2000 through June 30, 2001:

Manufacturer/exporter	Margin (percent)
Shanghai Ai Jian Import & Export Corporation ..	0.00 percent

Assessment Rates

The Department will determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. For assessment purposes, we do not have the information to calculate entered value because Ai Jian is not the importer of record for the subject merchandise. Accordingly, we have calculated customer-specific duty assessment rates for the merchandise in question by aggregating the dumping margins calculated for all U.S. sales to each customer and dividing this amount by the total quantity of those sales. To determine whether the duty assessment rates were *de minimis*, in accordance with the requirement set forth in 19 CFR 351.106(c)(2), we calculated customer-specific *ad valorem* ratios based on export prices. We will direct the Customs Service to assess the resulting assessment rates uniformly on all entries of that particular customer made during the period of review. Pursuant to 19 CFR 351.106(c)(2), we will instruct the Customs Service to liquidate without regard to antidumping duties any entries for which the assessment rate is *de minimis*. The Department will issue appropriate assessment instructions directly to the Customs Service within 15 days of publication of these final results of review.

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of this notice of final results of this antidumping duty administrative review for all shipments of persulfates from the PRC entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(1) of the Act: (1) for Ai Jian, the cash deposit rate will be zero; (2) for previously reviewed or investigated companies not listed above that have separate rates, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) the cash deposit rate for all other PRC exporters will be 119.02 percent, the PRC-wide rate established in the less than fair value investigation; and (4) the cash deposit rate for non-PRC exporters of subject merchandise from the PRC will be the rate applicable to the PRC supplier of that exporter.

These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return/ destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing this determination and notice in accordance with sections section 751(a)(1) and 777(i) of the Act.

Dated: February 3, 2003.

Faryar Shirzad,

Assistant Secretary for Import Administration.

Appendix—Issues in Decision Memo

Comment 1: Separate Rates
Comment 2: Use of Adverse Facts Available
Comment 3: Ocean Freight
Comment 4: Marine Insurance
Comment 5: Steam, Coal and Water Consumption
Comment 6: Use of Indian Data to Value Wood Pallets
Comment 7: Packing Labor
Comment 8: Whether the Financial Statements of Calibre Chemicals Pvt., Ltd. (Calibre) and Gujarat Persalts (P) Ltd. (Gujarat) Are Publicly Available Information
Comment 9: Whether Gujarat's Financial Statements Are an Appropriate Source for Factory Overhead (FOH), Selling, General, and Administrative (SG&A) Expenses, and Profit
Comment 10: Whether Calibre's Financial Statements Are an Appropriate Source for FOH, SG&A, and Profit
Comment 11: Adjustments to SG&A

[FR Doc. 03–3285 Filed 2–7–03; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A-580–834]

Stainless Steel Sheet and Strip in Coils From the Republic of Korea; Final Results and Partial Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results and partial rescission of antidumping duty administrative review of stainless steel sheet and strip in coils from the Republic of Korea.

SUMMARY: On August 7, 2002, the Department of Commerce (''the Department'') published in the **Federal Register** the preliminary results and partial rescission of its administrative review of the antidumping duty order on stainless steel sheet and strip in coils from the Republic of Korea (67 FR 51216). This review covers imports of subject merchandise from Pohang Iron & Steel Co., Ltd. (''POSCO''), Samwon Precision Metals Co., Ltd. (''Samwon'') and Daiyang Metal Co., Ltd. (''DMC''). The period of review (''POR'') is July 1, 2000 through June 30, 2001.

Based on our analysis of the comments received, we have made changes in the margin calculations for POSCO and DMC. Therefore, the final results differ from the preliminary results of review. The final weighted-average dumping margins for the reviewed firms are listed below in the section entitled ''Final Results of the Review.'' In addition, we are rescinding the administrative review with respect to Samwon.

EFFECTIVE DATE: February 10, 2003.

FOR FURTHER INFORMATION CONTACT: Laurel LaCivita (''POSCO'') and (''Samwon'') or Lilit Astvatsatrian (''DMC''), Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–4243 or (202) 482–6412, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 7, 2002, the Department published *Notice of Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review for Stainless Steel Sheet and Strip in Coils From the Republic of Korea*, 67 FR 51216 (August 7, 2002) (''*Preliminary Results*''). As we stated in that notice, we preliminarily rescinded this review with respect to Samwon, pursuant to its claim of no shipments of the subject merchandise during the POR. We are now rescinding this administrative review with respect to Samwon, since there is no information on the record that indicates that Samwon made any shipments during the POR.

We invited parties to comment on these preliminary results. We received written comments on September 6, 2002 from petitioners,[1] POSCO and DMC. On September 16, 2002, we received rebuttal comments from petitioners, POSCO and DMC. We have now completed the administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (''the Act'').

Under section 751(a)(3)(A) of the Act, the Department may extend the deadline for completion of an administrative review if it determines that it is not practicable to complete the review within the statutory time limit. On December 9, 2002, the Department extended the time limit for the final results in this review to February 3, 2003. *See Stainless Steel Sheet and Strip in Coils From the Republic of Korea: Extension of Final Results of Antidumping Duty Administrative Review*, 67 FR 72917 (December 9, 2002).

Scope of the Review

For purposes of this administrative review, the products covered are certain stainless steel sheet and strip in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject sheet and strip is a flat-rolled product in coils that is greater than 9.5 mm in width and less than 4.75 mm in thickness, and that is annealed or otherwise heat treated and pickled or otherwise descaled. The subject sheet and strip may also be further processed (*e.g.*, cold-rolled, polished, aluminized, coated, etc.) provided that it maintains the specific dimensions of sheet and strip following such processing.

The merchandise subject to this review is classified in the *Harmonized Tariff Schedule of the United States* (HTS) at subheadings: 7219.13.0031, 7219.13.0051, 7219.13.0071, 7219.1300.81[2], 7219.14.0030, 7219.14.0065, 7219.14.0090, 7219.32.0005, 7219.32.0020, 7219.32.0025, 7219.32.0035, 7219.32.0036, 7219.32.0038, 7219.32.0042, 7219.32.0044, 7219.33.0005, 7219.33.0020, 7219.33.0025, 7219.33.0035, 7219.33.0036, 7219.33.0038, 7219.33.0042, 7219.33.0044, 7219.34.0005, 7219.34.0020, 7219.34.0025, 7219.34.0030, 7219.34.0035, 7219.35.0005, 7219.35.0015, 7219.35.0030, 7219.35.0035, 7219.90.0010, 7219.90.0020, 7219.90.0025, 7219.90.0060, 7219.90.0080, 7220.12.1000, 7220.12.5000, 7220.20.1010, 7220.20.1015, 7220.20.1060, 7220.20.1080, 7220.20.6005, 7220.20.6010, 7220.20.6015, 7220.20.6060, 7220.20.6080, 7220.20.7005, 7220.20.7010, 7220.20.7015, 7220.20.7060, 7220.20.7080, 7220.20.8000, 7220.20.9030, 7220.20.9060, 7220.90.0010, 7220.90.0015, 7220.90.0060, and 7220.90.0080. Although the HTS subheadings are provided for convenience and Customs purposes, the Department's written description of the merchandise under review is dispositive.

Excluded from the scope of this review are the following: (1) sheet and strip that is not annealed or otherwise heat treated and pickled or otherwise descaled, (2) sheet and strip that is cut to length, (3) plate (*i.e.*, flat-rolled stainless steel products of a thickness of 4.75 mm or more), (4) flat wire (*i.e.*, cold-rolled sections, with a prepared edge, rectangular in shape, of a width of not more than 9.5 mm), and (5) razor blade steel. Razor blade steel is a flat-rolled product of stainless steel, not further worked than cold-rolled (cold-reduced), in coils, of a width of not more than 23 mm and a thickness of 0.266 mm or less, containing, by weight, 12.5 to 14.5 percent chromium, and certified at the time of entry to be used in the manufacture of razor blades. *See* Chapter 72 of the HTS, ''Additional U.S. Note'' 1(d).

In response to comments by interested parties, the Department has determined that certain specialty stainless steel products are also excluded from the scope of this review. These excluded products are described below.

Flapper valve steel is defined as stainless steel strip in coils containing, by weight, between 0.37 and 0.43 percent carbon, between 1.15 and 1.35 percent molybdenum, and between 0.20 and 0.80 percent manganese. This steel also contains, by weight, phosphorus of 0.025 percent or less, silicon of between 0.20 and 0.50 percent, and sulfur of 0.020 percent or less. The product is manufactured by means of vacuum arc remelting, with inclusion controls for sulphide of no more than 0.04 percent and for oxide of no more than 0.05 percent. Flapper valve steel has a tensile strength of between 210 and 300 ksi, yield strength of between 170 and 270 ksi, plus or minus 8 ksi, and a hardness (Hv) of between 460 and 590. Flapper valve steel is most commonly used to produce specialty flapper valves in compressors.

Also excluded is a product referred to as suspension foil, a specialty steel product used in the manufacture of suspension assemblies for computer disk drives. Suspension foil is described as 302/304 grade or 202 grade stainless steel of a thickness between 14 and 127 microns, with a thickness tolerance of plus-or-minus 2.01 microns, and surface glossiness of 200 to 700 percent Gs. Suspension foil must be supplied in coil widths of not more than 407 mm, and with a mass of 225 kg or less. Roll marks may only be visible on one side, with no scratches of measurable depth. The material must exhibit residual stresses of 2 mm maximum deflection, and flatness of 1.6 mm over 685 mm length.

Certain stainless steel foil for automotive catalytic converters is also excluded from the scope of this review. This stainless steel strip in coils is a specialty foil with a thickness of between 20 and 110 microns used to produce a metallic substrate with a honeycomb structure for use in automotive catalytic converters. The steel contains, by weight, carbon of no more than 0.030 percent, silicon of no more than 1.0 percent, manganese of no more than 1.0 percent, chromium of between 19 and 22 percent, aluminum of no less than 5.0 percent, phosphorus of no more than 0.045 percent, sulfur of no more than 0.03 percent, lanthanum of less than 0.002 or greater than 0.05 percent, and total rare earth elements of more than 0.06 percent, with the balance iron.

Permanent magnet iron-chromium-cobalt alloy stainless strip is also excluded from the scope of this review. This ductile stainless steel strip contains, by weight, 26 to 30 percent chromium, and 7 to 10 percent cobalt, with the remainder of iron, in widths 228.6 mm or less, and a thickness between 0.127 and 1.270 mm. It exhibits magnetic remanence between 9,000 and 12,000 gauss, and a coercivity of between 50 and 300 oersteds. This product is most commonly used in electronic sensors and is currently available under proprietary trade names such as ''Arnokrome III.''[3]

Certain electrical resistance alloy steel is also excluded from the scope of this review. This product is defined as a non-magnetic stainless steel manufactured to American Society of Testing and Materials (''ASTM'') specification B344 and containing, by

[1] Allegheny Ludlum Corporation, AK Steel Corporation (formerly Armco, Inc.), J&L Specialty Steel, Inc., North American Stainless, Butler-Armco Independent Union, Zanesville Armco Independent Union, and the United Steelworkers of America, AFL-CIO/CLC.

[2] Due to changes to the HTS numbers in 2001, 7219.13.0030, 7219.13.0050, 7219.13.0070, and 7219.13.0080 are now 7219.13.0031, 7219.13.0051, 7219.13.0071, and 7219.13.0081, respectively.

[3] ''Arnokrome III'' is a trademark of the Arnold Engineering Company.

weight, 36 percent nickel, 18 percent chromium, and 46 percent iron, and is most notable for its resistance to high temperature corrosion. It has a melting point of 1390 degrees Celsius and displays a creep rupture limit of 4 kilograms per square millimeter at 1000 degrees Celsius. This steel is most commonly used in the production of heating ribbons for circuit breakers and industrial furnaces, and in rheostats for railway locomotives. The product is currently available under proprietary trade names such as ''Gilphy 36.''[4]

Certain martensitic precipitation-hardenable stainless steel is also excluded from the scope of this review. This high-strength, ductile stainless steel product is designated under the Unified Numbering System (''UNS'') as S45500-grade steel, and contains, by weight, 11 to 13 percent chromium, and 7 to 10 percent nickel. Carbon, manganese, silicon and molybdenum each comprise, by weight, 0.05 percent or less, with phosphorus and sulfur each comprising, by weight, 0.03 percent or less. This steel has copper, niobium, and titanium added to achieve aging, and will exhibit yield strengths as high as 1700 Mpa and ultimate tensile strengths as high as 1750 Mpa after aging, with elongation percentages of 3 percent or less in 50 mm. It is generally provided in thicknesses between 0.635 and 0.787 mm, and in widths of 25.4 mm. This product is most commonly used in the manufacture of television tubes and is currently available under proprietary trade names such as ''Durphynox 17.''[5]

Finally, three specialty stainless steels typically used in certain industrial blades and surgical and medical instruments are also excluded from the scope of this review. These include stainless steel strip in coils used in the production of textile cutting tools (*e.g.*, carpet knives).[6] This steel is similar to AISI grade 420 but containing, by weight, 0.5 to 0.7 percent of molybdenum. The steel also contains, by weight, carbon of between 1.0 and 1.1 percent, sulfur of 0.020 percent or less, and includes between 0.20 and 0.30 percent copper and between 0.20 and 0.50 percent cobalt. This steel is sold under proprietary names such as ''GIN4 Mo.'' The second excluded stainless steel strip in coils is similar to AISI 420-J2 and contains, by weight, carbon of between 0.62 and 0.70 percent, silicon of between 0.20 and 0.50 percent, manganese of between 0.45 and 0.80 percent, phosphorus of no more than 0.025 percent and sulfur of no more than 0.020 percent. This steel has a carbide density on average of 100 carbide particles per 100 square microns. An example of this product is ''GIN5'' steel. The third specialty steel has a chemical composition similar to AISI 420 F, with carbon of between 0.37 and 0.43 percent, molybdenum of between 1.15 and 1.35 percent, but lower manganese of between 0.20 and 0.80 percent, phosphorus of no more than 0.025 percent, silicon of between 0.20 and 0.50 percent, and sulfur of no more than 0.020 percent. This product is supplied with a hardness of more than Hv 500 guaranteed after customer processing, and is supplied as, for example, ''GIN6''[7].

[4] ''Gilphy 36'' is a trademark of Imphy, S.A.

[5] ''Durphynox 17'' is a trademark of Imphy, S.A.

[6] This list of uses is illustrative and provided for descriptive purposes only.

[7] ''GIN4 Mo,'' ''GIN5'' and ''GIN6'' are the proprietary grades of Hitachi Metals America, Ltd.

Rescission of Review

In the *Preliminary Results*, we stated that Samwon reported, and the Department confirmed through independent U.S. Customs Service data, that it had no shipments of subject merchandise during the POR. Since Samwon did not report any shipments during the POR, we had no basis for determining a margin. Consequently, in accordance with 19 CFR 351.213(d)(3) and consistent with the Department's practice, we preliminarily rescinded our review with respect to Samwon. Since we have received no information since the *Preliminary Results* that contradicts the decision made in the preliminary results of review, we are rescinding the administrative review with respect to Samwon. Since Samwon did not participate in the original investigation, its cash deposit rate will remain at 2.49 percent, which is the all others rate established in the less than fair value (''LTFV'') investigation.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this administrative review are addressed in the ''Issues and Decision Memorandum'' (''*Decision Memorandum*'') from Joseph A. Spetrini, Deputy Assistant Secretary, Import Administration, to Faryar Shirzad, Assistant Secretary for Import Administration, dated February 3, 2002, which is hereby adopted by this notice. A list of the issues which parties have raised and to which we have responded, all of which are in the *Decision Memorandum*, is attached to this notice as an Appendix. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in the Central Records Unit, Room B-099 of the main Department building. In addition, a complete version of the *Decision Memorandum* can be accessed directly on the Web at *http://ia.ita.doc.gov/*. The paper copy and electronic version of the *Decision Memorandum* are identical in content.

Sales Below Cost

We disregarded sales below cost for both POSCO and DMC during the course of the review.

Changes Since the Preliminary Results

Based on our analysis of comments received, we have made changes in the margin calculations for POSCO and DMC. The changes to the margin calculations are listed below:

POSCO

- We revised the calculation of indirect selling expenses (''ISEs'') in the United States to include housing income. *See Comment 4*.
- We reclassified POSCO's income and loss with respect to money market funds as financing expenses and used the short-term income earned on monetary instruments to offset interest expense for the final results of review. *See Comment 6*.
- We revised our calculation of general and administrative (''G&A'') expenses to associate POSCO's reversal of bad debt to both export and domestic sales. *See Comment 7*.
- We revised the computer program to merge COP and constructed value (''CV'') files in the initial phases of the cost calculation in order to prepare data for those models sold exclusively in the United States for the assignation of the revised variable cost of manufacturing (''VCOM'') or total cost of manufacturing (''TCOM''). *See Comment 10*.
- We revised the computer program to apply the L-grade adjustment to the variable cost of manufacturing (''VCOM'') and total cost of manufacturing (''TCOM'') used in determining the difference-in-merchandise adjustment for sales to the United States. *See Comment 11*.

DMC

- We recalculated DMC's net interest expense in the home market using the actual amount of short-term interest income as an offset to interest expense. *See Comment 12*.
- We revised our calculation of ISE in the U.S. market to offset OMC's interest expense by the imputed credit reported in the sales database. *See Comment 13*.

• We revised the calculation of net price in the United States to eliminate the double counting of billing adjustments. *See Comment 14.*

Final Results of Review

We determine that the following percentage margin exists for the reviewed companies during the period July 1, 2000 through June 30, 2001:

STAINLESS STEEL SHEET AND STRIP IN COILS FROM KOREA

Manufacturer/exporter/ reseller	Margin (percent)
POSCO	0.98
DMC	5.44

The Department shall determine, and Customs shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), we have calculated exporter/importer (or customer)-specific assessment rate for merchandise subject to this review. The Department will issue appraisement instructions directly to the Customs Service within 15 days of publication of these final results of review. We will direct the Customs Service to assess the resulting assessment rates against the entered customs values for the subject merchandise on each of that importer's entries during the review period. For customer's duty-assessment purposes, we will calculate importer-specific assessment rates by dividing the dumping margins calculated for each importer by the total entered value of sales for each importer during the period of review.

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of this notice of final results of administrative review for all shipments of stainless steel sheet and strip in coils from the Republic of Korea entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(1) of the Act: (1) The cash deposit rates for POSCO and DMC will be the rates shown above; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in these or any previous reviews conducted by the Department, the cash deposit rate will be the ''all others'' rate, which is 2.49 percent.

These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

Notification of Interested Parties

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties or countervailing duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of the antidumping duties or countervailing duties occurred and the subsequent assessment of double antidumping duties or countervailing duties.

This notice also serves as a reminder to parties subject to administrative protective orders (''APOs'') of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this determination and notice in accordance with sections 751(a)(1) and 771(i) of the Act.

Dated: February 3, 2003.

Faryar Shirzad,

Assistant Secretary for Import Administration.

Appendix 1—Issues in the Decision Memorandum

A. Issues with Respect to POSCO

Comment 1: ISE ratio in the United States
Comment 2: Imputed Credit Offset to Pohang Steel America's (''POSAM'') Interest Expense Incurred in the United States
Comment 3: Major Inputs From Affiliated Parties
Comment 4: Housing Expenses in the United States
Comment 5: Loss on Valuation of Inventory
Comment 6: Short-term Financial Income Earned on Monetary Instruments
Comment 7: Reversal of an Allowance for Bad Debt
Comment 8: Unrealized Income Derived from Long-Term Trade Receivables
Comment 9: Constructed Export Price (''CEP'') Offset on CEP Sales
Comment 10: Ministerial Errors in the Merging of the Cost Files
Comment 11: Ministerial Error in the Calculation of L-Grade Adjustment

B. Issues with Respect to DMC

Comment 12: Adjustment for DMC's Net Financial Expenses Ratio in the Home Market
Comment 13: Ocean Metal Corporation's (''OMC'') Interest Expense Offset with Imputed Credit Expenses in the United States
Comment 14: Deduction of Billing Adjustments from OMC's Gross Unit Price
Comment 15: Inclusion of All Home Market Sales in the CEP Profit Calculation

[FR Doc. 03–3283 Filed 2–7–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–428–825]

Stainless Steel Sheet and Strip in Coils From Germany; Notice of Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On August 7, 2002, the Department of Commerce (the Department) published the preliminary results of administrative review of the antidumping order covering stainless steel sheet and strip in coils from Germany. *See Stainless Steel Sheet and Strip in Coils from Germany; Notice of Preliminary Results of Antidumping Duty Administrative Review,* 67 FR 51199 (August 7, 2002) (*Preliminary Results*). The merchandise covered by this order is stainless steel sheet and strip in coils as described in the ''Scope of the Review'' section of the **Federal Register** notice. The period of review (POR) is July 1, 2000, through June 30, 2001. We invited parties to comment on our *Preliminary Results.* The Department also notes that on

September 30, 2002 we published the final results of changed circumstances antidumping duty administrative review of stainless steel sheet and strip in coils from Germany. *See Stainless Steel Sheet and Strip in Coils from Germany: Final Results of Changed Circumstances Antidumping Duty Administrative Review,* 67 FR 61319 (September 30, 2002) (*Changed Circumstances*). We determined that ThyssenKrupp Nirosta GmbH (TKN) is the successor-in-interest to Krupp Thyssen Nirosta GmbH.[1]

Based on our analysis of the comments received, we have made changes in the margin calculations. Therefore, the final results differ from the preliminary results. The final weighted-average dumping margin for the reviewed firm is listed below in the section entitled ''Final Results of the Review.''

EFFECTIVE DATE: February 10, 2003.

FOR FURTHER INFORMATION CONTACT: Patricia Tran, Michael Heaney, or Robert James at (202) 482–1121, (202) 482–4475, or (202) 482–0649, respectively, Antidumping and Countervailing Duty Enforcement Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Scope of the Review

For purposes of this order, the products covered are certain stainless steel sheet and strip in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject sheet and strip is a flat-rolled product in coils that is greater than 9.5 mm in width and less than 4.75 mm in thickness, and that is annealed or otherwise heat treated and pickled or otherwise descaled. The subject sheet and strip may also be further processed (*e.g.*, cold-rolled, polished, aluminized, coated, etc.) provided that it maintains the specific dimensions of sheet and strip following such processing.

The merchandise subject to this order is classified in the Harmonized Tariff Schedule of the United States (HTS) at subheadings: 7219.13.00.31, 7219.13.00.51, 7219.13.00.71, 7219.13.00.81, 7219.14.00.30, 7219.14.00.65, 7219.14.00.90, 7219.32.00.05, 7219.32.00.20, 7219.32.00.25, 7219.32.00.35, 7219.32.00.36, 7219.32.00.38, 7219.32.00.42, 7219.32.00.44, 7219.33.00.05, 7219.33.00.20, 7219.33.00.25, 7219.33.00.35, 7219.33.00.36, 7219.33.00.38, 7219.33.00.42, 7219.33.00.44, 7219.34.00.05, 7219.34.00.20, 7219.34.00.25, 7219.34.00.30, 7219.34.00.35, 7219.35.00.05, 7219.35.00.15, 7219.35.00.30, 7219.35.00.35, 7219.90.00.10, 7219.90.00.20, 7219.90.00.25, 7219.90.00.60, 7219.90.00.80, 7220.12.10.00, 7220.12.50.00, 7220.20.10.10, 7220.20.10.15, 7220.20.10.60, 7220.20.10.80, 7220.20.60.05, 7220.20.60.10, 7220.20.60.15, 7220.20.60.60, 7220.20.60.80, 7220.20.70.05, 7220.20.70.10, 7220.20.70.15, 7220.20.70.60, 7220.20.70.80, 7220.20.80.00, 7220.20.90.30, 7220.20.90.60, 7220.90.00.10, 7220.90.00.15, 7220.90.00.60, and 7220.90.00.80. Although the HTS subheadings are provided for convenience and Customs purposes, the Department's written description of the merchandise under review is dispositive.

Excluded from the scope of this order are the following: (1) Sheet and strip that is not annealed or otherwise heat treated and pickled or otherwise descaled; (2) sheet and strip that is cut to length; (3) plate (*i.e.*, flat-rolled stainless steel products of a thickness of 4.75 mm or more); (4) flat wire (*i.e.*, cold-rolled sections, with a prepared edge, rectangular in shape, of a width of not more than 9.5 mm); and (5) razor blade steel. Razor blade steel is a flat-rolled product of stainless steel, not further worked than cold-rolled (cold-reduced), in coils, of a width of not more than 23 mm and a thickness of 0.266 mm or less, containing, by weight, 12.5 to 14.5 percent chromium, and certified at the time of entry to be used in the manufacture of razor blades. See Chapter 72 of the HTSUS, ''Additional U.S. Note'' 1(d).

In response to comments by interested parties, the Department has determined that certain specialty stainless steel products are also excluded from the scope of this order. These excluded products are described below.

Flapper valve steel is defined as stainless steel strip in coils containing, by weight, between 0.37 and 0.43 percent carbon, between 1.15 and 1.35 percent molybdenum, and between 0.20 and 0.80 percent manganese. This steel also contains, by weight, phosphorus of 0.025 percent or less, silicon of between 0.20 and 0.50 percent, and sulfur of 0.020 percent or less. The product is manufactured by means of vacuum arc remelting, with inclusion controls for sulphide of no more than 0.04 percent and for oxide of no more than 0.05 percent. Flapper valve steel has a tensile strength of between 210 and 300 ksi, yield strength of between 170 and 270 ksi, plus or minus 8 ksi, and a hardness (Hv) of between 460 and 590. Flapper valve steel is most commonly used to produce specialty flapper valves for compressors.

Also excluded is a product referred to as suspension foil, a specialty steel product used in the manufacture of suspension assemblies for computer disk drives. Suspension foil is described as 302/304 grade or 202 grade stainless steel of a thickness between 14 and 127 microns, with a thickness tolerance of plus-or-minus 2.01 microns, and surface glossiness of 200 to 700 percent Gs. Suspension foil must be supplied in coil widths of not more than 407 mm, and with a mass of 225 kg or less. Roll marks may only be visible on one side, with no scratches of measurable depth. The material must exhibit residual stresses of 2 mm maximum deflection, and flatness of 1.6 mm over 685 mm length.

Certain stainless steel foil for automotive catalytic converters is also excluded from the scope of this order. This stainless steel strip in coils is a specialty foil with a thickness of between 20 and 110 microns used to produce a metallic substrate with a honeycomb structure for use in automotive catalytic converters. The steel contains, by weight, carbon of no more than 0.030 percent, silicon of no more than 1.0 percent, manganese of no more than 1.0 percent, chromium of between 19 and 22 percent, aluminum of no less than 5.0 percent, phosphorus of no more than 0.045 percent, sulfur of no more than 0.03 percent, lanthanum of between 0.002 and 0.05 percent, and total rare earth elements of more than 0.06 percent, with the balance iron.

Permanent magnet iron-chromium-cobalt alloy stainless strip is also excluded from the scope of this order. This ductile stainless steel strip contains, by weight, 26 to 30 percent chromium, and 7 to 10 percent cobalt, with the remainder of iron, in widths 228.6 mm or less, and a thickness between 0.127 and 1.270 mm. It exhibits magnetic remanence between 9,000 and 12,000 gauss, and a coercivity of between 50 and 300 oersteds. This product is most commonly used in electronic sensors and is currently

[1] In addition to ThyssenKrupp Nirosta GmbH the following companies involved in the production, importation, and U.S. sale of subject merchandise have changed their corporate names: Krupp Thyssen Nirosta North America, Inc. to ThyssenKrupp Nirosta North America, Inc.; Krupp VDM GmbH to ThyssenKrupp VDM GmbH; and Krupp VDM Technologies Corporation to ThyssenKrupp VDM USA, Inc.

available under proprietary trade names such as ''Arnokrome III.'' [2]

Certain electrical resistance alloy steel is also excluded from the scope of this order. This product is defined as a non-magnetic stainless steel manufactured to American Society of Testing and Materials (ASTM) specification B344 and containing, by weight, 36 percent nickel, 18 percent chromium, and 46 percent iron, and is most notable for its resistance to high temperature corrosion. It has a melting point of 1390 degrees Celsius and displays a creep rupture limit of 4 kilograms per square millimeter at 1000 degrees Celsius. This steel is most commonly used in the production of heating ribbons for circuit breakers and industrial furnaces, and in rheostats for railway locomotives. The product is currently available under proprietary trade names such as ''Gilphy 36.'' [3]

Certain martensitic precipitation-hardenable stainless steel is also excluded from the scope of this order. This high-strength, ductile stainless steel product is designated under the Unified Numbering System (UNS) as S45500-grade steel, and contains, by weight, 11 to 13 percent chromium, and 7 to 10 percent nickel. Carbon, manganese, silicon and molybdenum each comprise, by weight, 0.05 percent or less, with phosphorus and sulfur each comprising, by weight, 0.03 percent or less. This steel has copper, niobium, and titanium added to achieve aging, and will exhibit yield strengths as high as 1700 Mpa and ultimate tensile strengths as high as 1750 Mpa after aging, with elongation percentages of 3 percent or less in 50 mm. It is generally provided in thicknesses between 0.635 and 0.787 mm, and in widths of 25.4 mm. This product is most commonly used in the manufacture of television tubes and is currently available under proprietary trade names such as ''Durphynox 17.'' [4]

Finally, three specialty stainless steels typically used in certain industrial blades and surgical and medical instruments are also excluded from the scope of this order. These include stainless steel strip in coils used in the production of textile cutting tools (*e.g.*, carpet knives).[5] This steel is similar to ASTM grade 440F, but containing, by weight, 0.5 to 0.7 percent of molybdenum. The steel also contains, by weight, carbon of between 1.0 and 1.1 percent, sulfur of 0.020 percent or less, and includes between 0.20 and 0.30 percent copper and between 0.20 and 0.50 percent cobalt. This steel is sold under proprietary names such as ''GIN4 Mo.'' The second excluded stainless steel strip in coils is similar to AISI 420–J2 and contains, by weight, carbon of between 0.62 and 0.70 percent, silicon of between 0.20 and 0.50 percent, manganese of between 0.45 and 0.80 percent, phosphorus of no more than 0.025 percent and sulfur of no more than 0.020 percent. This steel has a carbide density on average of 100 carbide particles per square micron. An example of this product is ''GIN5'' steel. The third specialty steel has a chemical composition similar to AISI 420 F, with carbon of between 0.37 and 0.43 percent, molybdenum of between 1.15 and 1.35 percent, but lower manganese of between 0.20 and 0.80 percent, phosphorus of no more than 0.025 percent, silicon of between 0.20 and 0.50 percent, and sulfur of no more than 0.020 percent. This product is supplied with a hardness of more than Hv 500 guaranteed after customer processing, and is supplied as, for example, ''GIN6.''[6]

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this administrative review are addressed in the ''Issues and Decision Memorandum'' (Decision Memorandum) from Joseph A. Spetrini, Deputy Assistant Secretary for Import Administration to Faryar Shirzad, Assistant Secretary for Import Administration, dated February 3, 2003, which is hereby adopted by this notice. A list of the issues which parties have raised and to which we have responded, all of which are in the Decision Memorandum, is attached to this notice as an appendix. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in room B–099 of the main Department of Commerce building. In addition, a complete version of the Decision Memorandum can be accessed directly on the internet at *www.ia.ita.doc.gov*. The paper copy and electronic version of the Decision Memorandum are identical in content.

Changes Since the Preliminary Results

Based on our analysis of comments received, we have made changes in the margin calculations. The changes are listed below:

- We have calculated average values for finish, gauge, width, hot/cold rolled, and temper for any sales missing these physical characteristics.
- We modified our calculation of interest expenses.
- We have deducted indirect selling expenses incurred in the country of manufacture from U.S. price and in our calculation of CEP profit to account for all U.S. selling expenses for TKN's affiliated U.S. reseller KHSP.
- We have also corrected certain programming and clerical errors in our preliminary results, where applicable. Any alleged programming errors with which we do not agree are discussed in the relevant sections of the Decision Memorandum, accessible in B–099 of the main Department of Commerce building and on the web at *www.ia.ita.doc.gov*.

Final Results of the Review

We determine the following percentage weighted-average margin exists for the period July 1, 2000 through June 30, 2001:

Manufacturer/Exporter	Weighted average margin (percentage)
TKN	4.77

Liquidation

The Department shall determine, and U.S. Customs Service (Customs) shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), we have calculated exporter/importer-specific assessment rates. The Department will issue appropriate assessment instructions directly to Customs within 15 days of publication of these final results of review. With respect to constructed export price sales, we divided the total dumping margins for the reviewed sales by the total entered value of those reviewed sales for each importer. We will direct Customs to assess the resulting assessment rate against the entered Customs values for the subject merchandise on each of the importer's entries under the relevant order during the POR.

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of this notice of final results of administrative review for all shipments of stainless steel sheet and strip in coils from Germany entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(1) of the Tariff Act: (1) The cash deposit rate for the reviewed

[2] ''Arnokrome III'' is a trademark of the Arnold Engineering Company.

[3] ''Gilphy 36'' is a trademark of Imphy, S.A.

[4] ''Durphynox 17'' is a trademark of Imphy, S.A.

[5] This list of uses is illustrative and provided for descriptive purposes only.

[6] ''GIN4 Mo,'' ''GIN5'' and ''GIN6'' are the proprietary grades of Hitachi Metals America, Ltd.

company will be the rate shown above; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 13.48 percent. This rate is the ''All Others'' rate from the amended final determination in the LTFV investigations. *See Stainless Steel Sheet and Strip in Coils From Germany: Amended Final Determination of Antidumping Duty Investigation,* 67 FR 15178, 15179 (March 29, 2002).

These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping or countervailing duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping or countervailing duties occurred and the subsequent assessment of doubled antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this determination and notice in accordance with sections 751(a)(1) and 777(i) of the Tariff Act.

Dated: February 3, 2003.

Faryar Shirzad,

Assistant Secretary for Import Administration.

Appendix

Comments and Responses

1. Whether TKN and TKVDM are Entitled to Separate Cash Deposit Rates
2. Indirect Selling Expenses Incurred in the Home Market for U.S. sales
3. Product Characteristics
4. Non-Dumped Sales
5. Financial Expenses
6. Clerical Errors

[FR Doc. 03–3286 Filed 2–7–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-428–825]

Stainless Steel Sheet and Strip in Coils from Germany; Antidumping Duty Administrative Review; Extension of Time Limit for Preliminary Results

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Extension of Time Limits.

SUMMARY: The Department of Commerce (the Department) is extending the time limits for the preliminary results of the 2001–2002 administrative review of the antidumping duty order on stainless steel sheet and strip in coils from Germany. This review covers one manufacturer/exporter of the subject merchandise to the United States and the period July 1, 2001 through June 30, 2002.

EFFECTIVE DATE: February 10, 2003.

FOR FURTHER INFORMATION CONTACT: Patricia Tran at (202) 482–1121 or Robert James at (202) 482–0649, Antidumping and Countervailing Duty Enforcement Group III, Office Eight, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION: On August 27, 2002, in response to requests from the respondent and petitioners, we published a notice of initiation of this administrative review in the **Federal Register**. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 67 FR 55000 (August 27, 2002). Pursuant to the time limits for administrative reviews set forth in section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Tariff Act), the current deadlines are April 2, 2003 for the preliminary results and July 31, 2003, for the final results. It is not practicable to complete this review within the normal statutory time limit due to a number of significant case issues, such as affiliated resellers, the use of downstream sales, and physical product characteristics. Therefore, the Department is extending the time limits for completion of the preliminary results until July 31, 2003 in accordance with section 751(a)(3)(A) of the Tariff Act. The deadline for the final results of this review will continue to be 120 days after publication of the preliminary results.

This extension is in accordance with section 751(a)(3)(A) of the Tariff Act.

Dated: January 31, 2003.

Joseph A. Spetrini,

Deputy Assistant Secretary for Import Administration, Group III.

[FR Doc. 03–3287 Filed 2–7–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–824]

Stainless Steel Sheet and Strip in Coils From Italy: Final Results of Antidumping Administrative Review

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of final results in the antidumping duty administrative review of stainless steel sheet and strip in coils from Italy

SUMMARY: On August 7, 2002, the U.S. Department of Commerce (''Department'') published in the **Federal Register** the preliminary results of its administrative review of the antidumping duty order on stainless steel sheet and strip in coils (''SSSS'') from Italy. *See Preliminary Results of Antidumping Duty Administrative Review: Stainless Steel Sheet and Strip in Coils from Italy,* 67 FR 51224 (August 7, 2002) (''*Preliminary Results*''). This review covers imports of subject merchandise from ThyssenKrupp Acciai Speciali Terni S.p.A (''TKAST'') and ThyssenKrupp AST USA, Inc.(''TKASTUSA''). The period of review (''POR'') is July 1, 2000 through June 30, 2001.

Based on our analysis of the comments received, we have made changes from our results from the preliminary results of review. Therefore, the final results differ from the preliminary results. The final weighted-average dumping margin for the reviewed firm is listed below in the section entitled ''Final Results of the Review.''

EFFECTIVE DATE: February 10, 2003.

FOR FURTHER INFORMATION CONTACT: Stephen Bailey or Robert Bolling,

Enforcement Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230; telephone: 202–482–1102, or 202–482–3434, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 7, 2002, the Department published in the **Federal Register** the preliminary results of its administrative review of the antidumping duty order on stainless steel sheet and strip in coils from Italy. *See Preliminary Results.* We invited parties to comment on our preliminary results of review.[1] We received written comments on September 6, 2002, from petitioners and respondents. On September 16, 2002, we received rebuttal comments from petitioners and respondents. On January 10, 2003, the Department issued a letter to interested parties requesting comments regarding whether certain selling agents of Ken-Mac Metals (''Ken-Mac'') were employees of Ken-Mac. On January 15, 2003, petitioners filed comments.

Under section 751(a)(3)(A) of the Act, the Department may extend the deadline for completion of an administrative review if it determines that it is not practicable to complete the review within the statutory time limit. Accordingly, the Department extended the due date for the notice of final results 40 days, from the original due date of December 5, 2002, to January 14, 2003. *See Stainless Steel Sheet and Strip in Coils from Italy: Extension of Time Limit of Final Results of Antidumping Duty Administrative Review*, 67 FR 75846 (December 10, 2002). In accordance with section 751(a)(3)(A) of the Act, the Department again extended the due date for the notice of final results an additional 20 days, from the revised due date of January 14, 2003 to February 3, 2003. *See Stainless Steel Sheet and Strip in Coils from Italy: Extension of Final Results of Antidumping Duty Administrative Review*, 68 FR 2316 (January 16, 2002). We have now completed the administrative review in accordance with section 751(a) of the Tariff Act of 1930, as amended (''the Act'').

[1] Petitioners in this case are Allegheny Ludlum Corporation, AK Steel Corporation, J&L Specialty Steel, Inc., North American Stainless, United Steelworkers of America, AFL-CIO/CLC, Butler Armco Independent Union and Zanesville Armco Independent Organization, Inc.

Scope of Review

For purposes of this administrative review, the products covered are certain stainless steel sheet and strip in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject sheet and strip is a flat-rolled product in coils that is greater than 9.5 mm in width and less than 4.75 mm in thickness, and that is annealed or otherwise heat treated and pickled or otherwise descaled. The subject sheet and strip may also be further processed (*e.g.*, cold-rolled, polished, aluminized, coated, *etc.*) provided that it maintains the specific dimensions of sheet and strip following such processing.

The merchandise subject to this review is currently classifiable in the Harmonized Tariff Schedule of the United States (''HTS'') at subheadings: 7219.13.0031, 7219.13.0051, 7219.13.0071, 7219.1300.81,[2] 7219.14.0030, 7219.14.0065, 7219.14.0090, 7219.32.0005, 7219.32.0020, 7219.32.0025, 7219.32.0035, 7219.32.0036, 7219.32.0038, 7219.32.0042, 7219.32.0044, 7219.33.0005, 7219.33.0020, 7219.33.0025, 7219.33.0035, 7219.33.0036, 7219.33.0038, 7219.33.0042, 7219.33.0044, 7219.34.0005, 7219.34.0020, 7219.34.0025, 7219.34.0030, 7219.34.0035, 7219.35.0005, 7219.35.0015, 7219.35.0030, 7219.35.0035, 7219.90.0010, 7219.90.0020, 7219.90.0025, 7219.90.0060, 7219.90.0080, 7220.12.1000, 7220.12.5000, 7220.20.1010, 7220.20.1015, 7220.20.1060, 7220.20.1080, 7220.20.6005, 7220.20.6010, 7220.20.6015, 7220.20.6060, 7220.20.6080, 7220.20.7005, 7220.20.7010, 7220.20.7015, 7220.20.7060, 7220.20.7080, 7220.20.8000, 7220.20.9030, 7220.20.9060, 7220.90.0010, 7220.90.0015, 7220.90.0060, and 7220.90.0080. Although the HTS subheadings are provided for convenience and Customs purposes, the Department's written description of the merchandise under review is dispositive.

Excluded from the scope of this review are the following: (1) Sheet and strip that is not annealed or otherwise heat treated and pickled or otherwise descaled, (2) sheet and strip that is cut to length, (3) plate (*i.e.*, flat-rolled stainless steel products of a thickness of 4.75 mm or more), (4) flat wire (*i.e.*, cold-rolled sections, with a prepared edge, rectangular in shape, of a width of not more than 9.5 mm), and (5) razor blade steel. Razor blade steel is a flat-rolled product of stainless steel, not further worked than cold-rolled (cold-reduced), in coils, of a width of not more than 23 mm and a thickness of 0.266 mm or less, containing, by weight, 12.5 to 14.5 percent chromium, and certified at the time of entry to be used in the manufacture of razor blades. *See* Chapter 72 of the HTS, ''Additional U.S. Note'' 1(d).

[2] Due to changes to the HTS numbers in 2001, 7219.13.0030, 7219.13.0050, 7219.13.0070, and 7219.13.0080 are now 7219.13.0031, 7219.13.0051, 7219.13.0071, and 7219.13.0081, respectively.

Flapper valve steel is also excluded from the scope of this review. This product is defined as stainless steel strip in coils containing, by weight, between 0.37 and 0.43 percent carbon, between 1.15 and 1.35 percent molybdenum, and between 0.20 and 0.80 percent manganese. This steel also contains, by weight, phosphorus of 0.025 percent or less, silicon of between 0.20 and 0.50 percent, and sulfur of 0.020 percent or less. The product is manufactured by means of vacuum arc remelting, with inclusion controls for sulphide of no more than 0.04 percent and for oxide of no more than 0.05 percent. Flapper valve steel has a tensile strength of between 210 and 300 ksi, yield strength of between 170 and 270 ksi, plus or minus 8 ksi, and a hardness (Hv) of between 460 and 590. Flapper valve steel is most commonly used to produce specialty flapper valves in compressors.

Also excluded is a product referred to as suspension foil, a specialty steel product used in the manufacture of suspension assemblies for computer disk drives. Suspension foil is described as 302/304 grade or 202 grade stainless steel of a thickness between 14 and 127 microns, with a thickness tolerance of plus-or-minus 2.01 microns, and surface glossiness of 200 to 700 percent Gs. Suspension foil must be supplied in coil widths of not more than 407 mm, and with a mass of 225 kg or less. Roll marks may only be visible on one side, with no scratches of measurable depth. The material must exhibit residual stresses of 2 mm maximum deflection, and flatness of 1.6 mm over 685 mm length.

Certain stainless steel foil for automotive catalytic converters is also excluded from the scope of this review. This stainless steel strip in coils is a specialty foil with a thickness of between 20 and 110 microns used to produce a metallic substrate with a honeycomb structure for use in automotive catalytic converters. The steel contains, by weight, carbon of no more than 0.030 percent, silicon of no more than 1.0 percent, manganese of no more than 1.0 percent, chromium of between 19 and 22 percent, aluminum of no less than 5.0 percent, phosphorus of no more than 0.045 percent, sulfur of no more than 0.03 percent, lanthanum of less than 0.002 or greater than 0.05 percent, and total rare earth elements of more than 0.06 percent, with the balance iron.

Permanent magnet iron-chromium-cobalt alloy stainless strip is also excluded from the scope of this order. This ductile stainless steel strip contains, by weight, 26 to 30 percent chromium, and 7 to 10 percent cobalt, with the remainder of iron, in widths 228.6 mm or less, and a thickness between 0.127 and 1.270 mm. It exhibits magnetic remanence between 9,000 and 12,000 gauss, and a coercivity of between 50 and 300 oersteds. This product is most commonly used in electronic sensors and is currently available under proprietary trade names such as ''Arnokrome III.''[3]

Certain electrical resistance alloy steel is also excluded from the scope of this review. This product is defined as a non-magnetic stainless steel manufactured to American Society of Testing and Materials (''ASTM'') specification B344 and containing, by weight, 36 percent nickel, 18 percent chromium, and 46 percent iron, and is most notable for its resistance to high temperature corrosion. It has a melting point of 1390 degrees Celsius and displays a creep rupture limit of 4 kilograms per square millimeter at 1000 degrees Celsius. This steel is most commonly used in the production of heating ribbons for circuit breakers and industrial furnaces, and in rheostats for railway locomotives. The product is currently available under proprietary trade names such as ''Gilphy 36.''[4]

Certain martensitic precipitation-hardenable stainless steel is also excluded from the scope of this order. This high-strength, ductile stainless steel product is designated under the Unified Numbering System (''UNS'') as S45500-grade steel, and contains, by weight, 11 to 13 percent chromium, and 7 to 10 percent nickel. Carbon, manganese, silicon and molybdenum each comprise, by weight, 0.05 percent or less, with phosphorus and sulfur each comprising, by weight, 0.03 percent or less. This steel has copper, niobium, and titanium added to achieve aging, and will exhibit yield strengths as high as 1700 Mpa and ultimate tensile strengths as high as 1750 Mpa after aging, with elongation percentages of 3 percent or less in 50 mm. It is generally provided in thicknesses between 0.635 and 0.787 mm, and in widths of 25.4 mm. This product is most commonly used in the manufacture of television tubes and is currently available under proprietary trade names such as ''Durphynox 17.''[5]

Also excluded are three specialty stainless steels typically used in certain industrial blades and surgical and medical instruments. These include stainless steel strip in coils used in the production of textile cutting tools (*e.g.*, carpet knives).[6] This steel is similar to AISI grade 420 but containing, by weight, 0.5 to 0.7 percent of molybdenum. The steel also contains, by weight, carbon of between 1.0 and 1.1 percent, sulfur of 0.020 percent or less, and includes between 0.20 and 0.30 percent copper and between 0.20 and 0.50 percent cobalt. This steel is sold under proprietary names such as ''GIN4 Mo.''[7] The second excluded stainless steel strip in coils is similar to AISI 420–J2 and contains, by weight, carbon of between 0.62 and 0.70 percent, silicon of between 0.20 and 0.50 percent, manganese of between 0.45 and 0.80 percent, phosphorus of no more than 0.025 percent and sulfur of no more than 0.020 percent. This steel has a carbide density on average of 100 carbide particles per 100 square microns. An example of this product is ''GIN5''[8] steel. The third specialty steel has a chemical composition similar to AISI 420 F, with carbon of between 0.37 and 0.43 percent, molybdenum of between 1.15 and 1.35 percent, but lower manganese of between 0.20 and 0.80 percent, phosphorus of no more than 0.025 percent, silicon of between 0.20 and 0.50 percent, and sulfur of no more than 0.020 percent. This product is supplied with a hardness of more than Hv 500 guaranteed after customer processing, and is supplied as, for example, ''GIN6.''[9]

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this administrative review are addressed in the ''Issues and Decision Memorandum'' (''*Decision Memorandum*'') from Joseph A. Spetrini, Deputy Assistant Secretary, Import Administration, to Faryar Shirzad, Assistant Secretary for Import Administration, dated February 3, 2003, which is hereby adopted by this notice. A list of the issues which parties have raised and to which we have responded, are in the *Decision Memorandum,* which is attached to this notice as an Appendix. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in the *Decision Memorandum* which is on file in the Central Records Unit, Room B–099 of the main Department building. In addition, a complete version of the *Decision Memorandum* can be accessed directly on the Web at *http://ia.ita.doc.gov/frn/index.html*. The paper copy and electronic version of the *Decision Memorandum* are identical in content.

Sales Below Cost

We disregarded sales below cost for TKAST during the course of the review.

Changes Since the Preliminary Results

Based on our analysis of comments received, we have made changes in the margin calculations for TKAST. The changes to the margin calculations are listed below:

1. The Department disallowed TKAST's insurance revenue allocation claim for certain sales which were ultimately returned to TKAST. However, the Department made a sales-specific insurance revenue adjustment for certain sales because the information necessary for calculating this adjustment was submitted on the record of this administrative review. *See* Comment 1.

2. The Department is adding home market interest revenue to the home market gross unit price in accordance with section 773(a)(6)(C) of the Act. See Comment 2.

3. The Department made certain changes based on TKAST's reported U.S. commissions. *See Commissions Memorandum from Stephen Bailey to Edward C. Yang dated February 3, 2003.*

4. The Department is adjusting U.S. price to account for the incurred cost of skids and additional U.S. freight. See Comment 7.

5. The Department made certain changes to TKAST's interest expenses. See Comment 5.

6. The Department is adjusting CEP profit to account for an affiliate's further manufacturing in the U.S. *See* Comment 9.

Final Results of Review

We determine that the following percentage margin exists for the period July 1, 2000, through June 30, 2001:

[3] ''Arnokrome III'' is a trademark of the Arnold Engineering Company.

[4] ''Gilphy 36'' is a trademark of Imphy, S.A.

[5] ''Durphynox 17'' is a trademark of Imphy, S.A.

[6] This list of uses is illustrative and provided for descriptive purposes only.

[7] ''GIN4 Mo'' is the proprietary grade of Hitachi Metals America, Ltd.

[8] ''GIN5'' is the proprietary grade of Hitachi Metals America, Ltd.

[9] ''GIN6'' is the proprietary grade of Hitachi Metals America, Ltd.

Producer/manufacturer/exporter	Weighted-average margin
TKAST	5.84%

The Department shall determine, and Customs shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), we have calculated exporter/importer (or customer)-specific assessment rate for merchandise subject to this review. The Department will issue appraisement instructions directly to the Customs Service within 15 days of publication of these final results of review. We will direct the Customs Service to assess the resulting assessment rates against the entered customs values for the subject merchandise on each of that importer's entries during the review period. For customer's duty-assessment purposes, we will calculate importer-specific assessment rates by dividing the dumping margins calculated for each importer by the total entered value of sales for each importer during the period of review.

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of this notice of final results of administrative review for all shipments of stainless steel sheet and strip in coils from Italy entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for TKAST will be the rate shown above; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in these or any previous reviews conducted by the Department, the cash deposit rate will be the ''all others'' rate, which is 11.23 percent.

These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

Notification of Interested Parties

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of the antidumping duties or countervailing duties occurred and the subsequent assessment of double antidumping duties or countervailing duties.

This notice also serves as a reminder to parties subject to administrative protective orders (''APOs'') of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this determination and notice in accordance with sections 751(a)(1) and 771(i) (1) of the Act.

Dated: February 3, 2003.

Faryar Shirzad,

Assistant Secretary for Import Administration.

Appendix—Issues in the Decision Memorandum

1. U.S. Insurance Revenue
2. H.M. Interest Revenue
3. U.S. Commissions
4. Home Market Imputed Credit
5. Cost of Production Adjustments
6. Treatment of Negative Margins
7. Skid and Freight Revenue Adjustments
8. Re-packing Expenses
9. Further Manufacturing

[FR Doc. 03–3288 Filed 2–7–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket No. 030110008–3008–01]

Proposed Voluntary Product Standard PS 2–02 ''Performance Standard for Wood-Based Structural-Use Panels''

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice and request for comments.

SUMMARY: This notice advises the public that the National Institute of Standards and Technology (NIST) is distributing a proposed revision of Voluntary Product Standard PS 2–92, ''Performance Standard for Wood-Based Structural-Use Panels.'' This standard, prepared by the Standing Committee for PS 2, establishes criteria for assessing the acceptability of wood-based structural-use panels for construction sheathing and single-floor applications and provides a basis for common understanding among the producers, distributors, and the users of these products. Interested parties are invited to review the proposed standard and submit comments to NIST.

DATES: Written comments regarding the proposed revision, PS 2–02, should be submitted to the Standards Services Division, NIST, no later than April 28, 2003.

ADDRESSES: An electronic copy (an Adobe Acrobat File) of the proposed standard, PS 2–02, can be obtained at the following Web site *http://ts.nist.gov/ps2revision*. This site also includes an electronic copy of PS 2–92 (the existing standard), a summary of significant changes, and a form for submitting comments. Written comments on the proposed revision should be submitted to Ms. JoAnne Overman, Standards Services Division, NIST, 100 Bureau Drive, Stop 2150, Gaithersburg, MD 20899–2150. Electronic comments may be submitted to *joanne.overman@nist.gov.*

FOR FURTHER INFORMATION CONTACT: Ms. JoAnne Overman, Standards Services Division, National Institute of Standards and Technology, telephone: (301) 975–4037; fax: (301) 975–5414, e-mail: *joanne.overman@nist.gov.*

SUPPLEMENTARY INFORMATION: Proposed Voluntary Product Standard PS 2–02 establishes criteria for assessing the acceptability of wood-based structural-use panels for construction sheathing and single-floor applications. Structural-use panels include: plywood, wafer board, oriented strand board (OSB), structural particle board, and composite panels. The standard provides performance requirements, adhesive bond performance, panel construction and workmanship, dimensions and tolerances, marking, and moisture content of structural-use panels. The standard classifies panels by exposure durability and by grade. It provides test methods, a glossary of trade terms and definitions, and a quality certification program whereby agencies inspect, sample, and test products for qualification under this standard. Information regarding industry practices for reinspection is provided in an appendix.

The proposed revision to the standard ''Performance Standard for Wood-Based

Structural-Use Panels'' has been developed and is being processed in accordance with Department of Commerce provisions in Title 15 Code of Federal Regulations part 10, Procedures for the Development of Voluntary Product Standards, as amended (published June 20, 1986). The current standard, PS 2–92, was published in 1992.

The Standing Committee for PS 2 has the responsibility for maintaining, revising, and interpreting the standard. The Committee is comprised of producers, distributors, users, and others with an interest in the standard. Considerable research and review has gone into completing this revision; much of the work was performed by the document's sponsor, APA—The Engineered Wood Association.

In addition to format, terminology updates, and general clarification, this revision makes several substantial changes to the standard, including: (1) Revision of bond performance criteria and methods for oriented strand board (OSB); (2) revision of linear expansion criteria and methods; (3) revision to structural performance descriptions; and (4) deletion of requirements and methods for Exposure 2 and stability index.

OSB Bond Performance/Exposure 1—APA began evaluation of quality assurance test methods in 1992 at the request of APA members to identify a more appropriate test. The 1″x5″ specimen was viewed as being too small, having an inappropriate orientation (tested on edge), and being poorly related to manufacturing processes and product applications. Several mill trials resulted in the adoption of a flatwise, simple static bending test based on Method D of ASTM D–3043 ''Methods of Testing Structural Panels in Flexure.'' This test has been added to PS 2 in section 7.6, *Small static bending test*.

Products sampled on a quarterly basis were evaluated for structural performance, and resulting properties from the same panels were used to develop industry quality assurance property levels (dry properties in Table 7) for the various roof and floor spans covered in PS 2 and PRP–108 ''Performance Standards for Structural-Use Panels.'' Cycled strength properties for Exposure 1 were established based on a cold-water vacuum soak.

Additional development work was completed in 1998–2000 to update the Exposure 1 criteria. The update was based on industry comments that adding heat to the cycle would be preferable to differentiate among resin modifications. Again, quarterly samples were benchmarked for both structural and Exposure 1 bond performance to establish updated Exposure 1 criteria for small static bending samples after cycling using hot water, vacuum soak, and oven drying (Test 7.16, *Moisture cycle test for bond performance*). The updated Exposure 1 criteria can be found in Table 6, and the application of the test and criteria are shown in sections 5.3.3.1.b and 6.2.4.1.b of PS 2.

Revisions to the linear expansion method were made based on a need to reflect industry performance and serviceability requirements. Industry samples were benchmarked for linear expansion, and a suitable cycle and criteria were evaluated. The criterion was established at an average level, which is common for serviceability applications. The cycle was based on equilibrium at 50% relative humidity, which is viewed to be more representative of installed conditions than the oven-dry condition. Industry surveys were conducted and reviewed to determine acceptable performance using the revised criteria and test methods. Verification of the methods was conducted on a representative subset of products. The criteria and application are updated in sections 5.3.2.1 and 6.2.3. The test method revisions are reflected in section 7.8.

General comments on the structural performance sections indicated the need for improvement in the instructions. Concerns were expressed about applying structural performance criteria to daily mill quality assurance evaluations. Additionally, there were questions about the linearity of deflection requirements for a given increase in spans. The following changes were made:

(a) Revisions to these sections spell out the test provisions more clearly. Each possible scenario is described independently. The actual percentage resulting in passing results is spelled out for each test and criterion explicitly.

(b) Where appropriate, a clause was added to each performance test stating that the average of the tests should meet the designated requirement.

(c) For cases such as Single Floor 32oc, where the deflection requirement is more stringent than a straightforward linear analysis would predict, it was explained that the linear analysis results in excessive movement under typical floor loading conditions.

The Exposure 2 rating for bond performance has become obsolete. There are no known producers using the Exposure 2 rating. There is also no reason to believe the rating will become necessary for future production. Therefore, performance requirements related to the Exposure 2 rating have been deleted.

The stability index, although applied to product qualifications, was demonstrated to not be a very robust test in that panels evaluated never failed to meet the requirement. It was agreed by the Standing Committee that there is little value in retaining the stability index in the standard.

The dead weight stiffness test was added as a non-mandatory test in Section 7.20. As part of the guidance for using the test, Table 8, *Typical pre-loads and test loads,* was included.

Concurrent with this **Federal Register** Notice, the proposed Voluntary Product Standard PS 2–02 is being distributed by the National Institute of Standards and Technology to national experts and other interested parties for review and comment, in order to ensure that the standard constitutes acceptable industry practice. All public comments will be reviewed and considered. The Standing Committee for PS 2 and NIST will revise the standard accordingly.

Dated: February 4, 2003.

Arden L. Bement, Jr.,

Director.

[FR Doc. 03–3289 Filed 2–7–03; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF DEFENSE

Department of the Army

Armament Retooling and Manufacturing Support Executive Advisory Committee

AGENCY: Department of the Army, DoD.

ACTION: Notice of open meeting.

SUMMARY: pursuant to Pub. L. 92–463, notice is hereby given of the next meeting of the Armament Retooling and Manufacturing Support (ARMS) Executive Advisory Committee (EAC).

Date of Meeting: March 13–14, 2003.

Place of Meeting: Sheraton World Resort Hotel, 10100 International Drive, Orlando, FL 32821.

Time of meeting: 1 PM–5 PM on March 13 and 7:30 AM–12 PM on March 14.

Proposed Agenda: The purpose of the meeting is to update the EAC and public on the status of ongoing actions, new items of interest, and suggested future direction/actions. Topics of this meeting will include: Divestiture of ARMS Facilities; Minimization of Negative Impacts upon Tenants; and Allocations of ARMS Program Funding. This meeting is open to the public.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Perez, U.S. Army Joint Munitions

Command, and Attn: AMSJM–CCA–IA, Rock Island Arsenal, IL 61299, phone (309) 782–3360.

SUPPLEMENTARY INFORMATION: The EAC encourages the development of new and innovative methods to optimize the asset value of the Government-Owned, Contractor-Operated ammunition industrial base for peacetime and national emergency requirements, while promoting economical and efficient processes at minimal operating costs, retention of critical skills, community economic benefits, and a potential model for defense conversion. The U.S. Army, Joint Munitions Command, will host this meeting.

A block of rooms has been reserved at the Sheraton World Resort hotel for the nights of March 12–14, 2003. The Sheraton World Resort Hotel is located at 10100 International Drive, Orlando, Florida 32821, local phone (407) 352–1100. Please make your reservations by calling 800–327–0363. Be sure to mention the guest code acronym U.S. Army OSC ARMS Team. Reserve your room prior to February 12th to get the Government Rate of $129.00 a night. Also notify this office of your attendance by notifying Mike Perez, *perezm@osc.army mil*, and (309) 782–3360 (DSN 793–3360). To insure adequate arrangements (transportation, conference facilities, etc.) for all attendees, we request your attendance notification with this office by February 28, 2003. Corporate casual is meeting attire.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 03–3249 Filed 2–7–03; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Advisory Committee Meeting

AGENCY: Department of the Army, DOD.

ACTION: Notice of meeting.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following meeting:

Name of Committee: Distance Learning/Training Technology Subcommittee of the Army Education Advisory Committee.

Date: March 11–12, 2003.

Place: Newport News, VA.

Time: 8 am–4:30 pm (March 11, 2003). 8 am–12 pm (March 12, 2003).

Proposed Agenda: Initial starting point of meeting will include Updates on The Army Distance Learning Program (TADLP) and infrastructure, followed by discussions that focus on learning and technology.

Purpose of the Meeting: To provide for the continuous exchange of information and ideas for distance learning between the U.S. Army Training and Doctrine Command (TRADOC), HQ Department of the Army, and the academic and business community.

FOR FURTHER INFORMATION CONTACT: All communications regarding this subcommittee should be addressed to Mr. Jim Bradley, at Commander, Headquarters TRADOC, ATTN: ATTG–CF (Mr. Bradley), Fort Monroe, VA 23651–5000; telephone number (757) 788–5591.

SUPPLEMENTARY INFORMATION: Meeting of the advisory committee is open to the public. Because of restricted meeting space, attendance will be limited to those persons who have notified the Advisory Committee Management Office in writing at least five days prior to the meeting of their intention to attend. Contact Mr. Bradley (757–788–5991) for meeting agenda and specific locations.

Any member of the public may file a written statement with the committee before, during, or after the meeting. To the extent that time permits, the committee chairman may allow public presentations or oral statements at the meeting.

Robert E. Seger,

Senior Executive Service, Assistant Deputy Chief of Staff for Training.

[FR Doc. 03–3248 Filed 2–7–03; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Board of Visitors, United States Military Academy

AGENCY: Department of the Army, DoD.

ACTION: Notice of open meeting.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following committee meeting:

Name of Committee: Board of Visitors, United States Military Academy.

Date: Wednesday, March 5, 2003.

Place of Meeting: Veteran Affairs Conference Room, Room 418, Senate Russell Office Building, Washington, DC.

Start Time of Meeting: Approximately 10 a.m.

FOR FURTHER INFORMATION CONTACT: Lieutenant Colonel Edward C. Clarke, United States Military Academy, West Point, NY 10996–5000, (845) 938–4200.

SUPPLEMENTARY INFORMATION: *Proposed Agenda:* Organizational Meeting of the Board of Visitors. Receive updates on Academic, Military and Physical Programs, Athletic Program, Admissions at USMA and USMAPS. All proceedings are open.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 03–3245 Filed 2–7–03; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Availability for Non-Exclusive, Exclusive, or Partially Exclusive Licensing of U.S. Patent Application Concerning Method for Treating, Preventing, or Inhibiting Enterotoxigenic Escherichia Coli Infections With Bovine Erythrocyte Preparations

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.6 and 404.7, announcement is made of the availability for licensing of U.S. Patent Application No. 10/077,804 entitled ''Method for Treating, Preventing, or Inhibiting Enterotoxigenic Escherichia Coli Infections with Bovine Erythrocyte Preparations,'' filed February 20, 2002. The United States Government, as represented by the Secretary of the Army, has rights in this invention.

ADDRESSES: Commander, U.S. Army Medical Research and Materiel Command, ATTN: Command Judge Advocate, MCMR–JA, 504 Scott Street, Fort Detrick, Frederick, MD 21702–5012.

FOR FURTHER INFORMATION CONTACT: For patent issues, Ms. Elizabeth Arwine, Patent Attorney, (301) 619–7808. For licensing issues, Dr. Paul Mele, Office of Research & Technology Assessment, (301) 619–6664, both at telefax (301) 619–5034.

SUPPLEMENTARY INFORMATION: This invention relates generally to bovine erthrocyte preparations. In particular, the present invention relates to methods of using bovine erythrocyte preparations for treating, preventing, or inhibiting enterotoxigenic *Escherichia coli* infections.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 03–3244 Filed 2–7–03; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Availability for Non-Exclusive, Exclusive, or Partially Exclusive Licensing of U.S. Provisional Patent Application Concerning Protective Garment

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.6 and 404.7, announcement is made of the availability for licensing of U.S. Provisional Patent Application No. 60/428,750 entitled ''Protective Garment,'' filed November 25, 2002. The United States Government, as represented by the Secretary of the Army, has rights in this invention.

ADDRESSES: Commander, U.S. Army Medical Research and Materiel Command, ATTN: Command Judge Advocate, MCMR–JA, 504 Scott Street, Fort Detrick, Frederick, MD 21702–5012.

FOR FURTHER INFORMATION CONTACT: For patent issues, Ms. Elizabeth Arwine, Patent Attorney, (301) 619–7808. For licensing issues, Dr. Paul Mele, Office of Research & Technology Assessment, (301) 619–6664, both at telefax (301) 619–5034.

SUPPLEMENTARY INFORMATION: The present invention relates to protective garments, providing the wearer improved protection from the inadvertent exposure to materials. The protective garments have an anchoring means for anchoring its sleeves to the wrist or hands of the wearer so as to prevent the sleeve from sliding up the wearer's arm.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 03–3243 Filed 2–7–03; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Performance Review Boards Membership

AGENCY: Department of the Army, DOD.

ACTION: Notice.

SUMMARY: This notice amends Performance Review Boards Membership, published November 25, 2002 (67 FR 70584), for the Department of the Army. The following name is added to the Performance Review Board for the U.S. Army Corps of Engineers (USACE): Mr. Thomas E. Caver, Principal Assistant for Civil Works, Directorate of Civil Works, Headquarters, USACE.

EFFECTIVE DATES: November 18, 2002.

FOR FURTHER INFORMATION CONTACT: Ms. Kate Mack, U.S. Army Senior Executive Service Office, Assistant Secretary of the Army, Manpower & Reserve Affairs, 111 Army Pentagon, Washington, DC 20310–0111.

SUPPLEMENTARY INFORMATION: Section 4314(c)(1) through (5) of Title 5, U.S.C., requires each agency to establish, in accordance with regulations, one or more Senior Executive Service performance review boards. The boards shall review and evaluate the initial appraisal of senior executives' performance by supervisors and make recommendations to the appointing authority or rating official relative to the performance of these executives.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 03–3247 Filed 2–7–03; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Estuary Habitat Restoration Council; Open Meeting

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DOD.

ACTION: Notice of open meeting.

SUMMARY: In accordance with section 105(h) of the Estuary Restoration Act of 2000, (Title I, Pub. L. 106–457), announcement is made of the forthcoming meeting of the Estuary Habitat Restoration Council. The meeting is open to the public.

DATES: The meeting will be held February 26, 2003, from 10 a.m. to 12 p.m.

ADDRESSES: The meeting will be held at 441 G Street, NW., Washington, DC., room 3M60/70.

FOR FURTHER INFORMATION CONTACT: Ms. Ellen Cummings, Headquarters, U.S. Army Corps of Engineers, Washington, DC 20314–1000, (202) 761–4558; or Ms. Cynthia Garman-Squier, Office of the Assistant Secretary of the Army (Civil Works), Washington, DC., (703) 695–6791.

SUPPLEMENTARY INFORMATION: The Estuary Habitat Restoration Council consists of representatives of five agencies. These are the National Oceanic and Atmospheric Administration, Environmental Protection Agency, U.S. Fish and Wildlife Service, Department of Agriculture, and Army. Among the duties of the Council is development of a national estuary restoration strategy designed in part to meet the goal of restoring one million acres by 2010.

Items the Council will consider at this meeting include revision of the Council's operating procedures and the future role of the Council in estuary habitat restoration.

Current security measures require that persons interested in attending the meeting must pre-register with us before 2 p.m. February 24, 2003. Please contact Ellen Cummings at 202–761–4558 to pre-register. When leaving a voice mail message please provide the name of the individual attending, the company or agency represented, and a telephone number, in case there are any questions. The public should enter on the ''G'' Street side of the GAO building. All attendees are required to show photo identification and must be escorted to the meeting room by Corps personnel. Attendee's bags and other possessions are subject to being searched. All attendees arriving between one-half hour before and one-half hour after 10 a.m. will be escorted to the hearing. Those who are not pre-registered and/or arriving later than the allotted time will be unable to attend the public meeting.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 03–3246 Filed 2–7–03; 8:45 am]

BILLING CODE 3710–92–M

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; List of Correspondence

AGENCY: Department of Education.

ACTION: List of correspondence from July 1, 2002 through September 30, 2002.

SUMMARY: The Secretary is publishing the following list pursuant to section 607(d) of the Individuals with Disabilities Education Act (IDEA). Under section 607(d) of IDEA, the Secretary is required, on a quarterly basis, to publish in the **Federal Register** a list of correspondence from the Department of Education received by

individuals during the previous quarter that describes the interpretations of the Department of Education of IDEA or the regulations that implement IDEA.

FOR FURTHER INFORMATION CONTACT: Melisande Lee or JoLeta Reynolds. Telephone: (202) 205–5507.

If you use a telecommunications device for the deaf (TDD), you may call (202) 205–5637 or the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain a copy of this notice in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to Katie Mincey, Director of the Alternate Format Center. Telephone: (202) 205–8113.

SUPPLEMENTARY INFORMATION: The following list identifies correspondence from the Department issued from July 1, 2002 through September 30, 2002.

Included on the list are those letters that contain interpretations of the requirements of IDEA and its implementing regulations, as well as letters and other documents that the Department believes will assist the public in understanding the requirements of the law and its regulations. The date and topic addressed by a letter are identified, and summary information is also provided, as appropriate. To protect the privacy interests of the individual or individuals involved, personally identifiable information has been deleted, as appropriate.

Part B—Assistance for Education of all children with disabilities

Section 611—Authorization; Allotment; Use of Funds; Authorization of Appropriations.

Topic Addressed: Grants to States

- Letter dated September 25, 2002 to Rhode Island Department of Education Office of Special Needs Director Dr. Thomas P. DiPaolo, clarifying that although the effective date of a Part B grant cannot be changed, it is possible, subject to certain conditions, to grant pre-award costs to a State to mitigate significant hardship on State and local programs if there is very limited potential harm to the Federal interest.

Topic Addressed: Authorization of Appropriations

- Memorandum dated September 30, 2002 to Governors and Chief State School Officers, regarding nonregulatory guidance pertaining to Federal education programs, including section 611 of IDEA, with advance appropriations in fiscal year (FY) 2002.

Section 612—State Eligibility

Topic Addressed: Confidentiality of Education Records

- Letter dated July 30, 2002 to Pennsylvania Assistant Director of Special Education John Tommasini from Family Policy Compliance Office Director LeRoy S. Rooker, explaining that States must resolve complaints filed by non-parent individuals or organizations even if the parent refuses to consent to the disclosure of personally identifiable information about the student; but, in such cases, the State may not disclose personally identifiable information about the student.

- Letter dated July 29, 2002 to U.S. Representative C.L. ''Butch'' Otter from Family Policy Compliance Office Director LeRoy S. Rooker, regarding the right of parents to obtain copies of education records and whether a parent's representative can inspect and review education records.

- Letter dated July 18, 2002 to individual, (personally identifiable information redacted), regarding the creation, retention, and destruction of education records, and records handling and storage.

Topic Addressed: Maintenance of Effort

- Letter dated July 16, 2002 to Michael J. Hernandez, Esq., regarding the use of Medicaid reimbursement funds to construct or equip special education classrooms.

Section 615—Procedural Safeguards

Topic Addressed: Due Process Hearings

- Letter dated September 12, 2002 to Louisiana Assistant Legislative Auditor David K. Greer, regarding whether due process hearings under the IDEA may be conducted by Louisiana's administrative law judge panel and clarifying that as a general matter, the Office of Special Education Programs does not interpret State law, or opine about its application, unless State law appears to conflict with Federal requirements.

Part C—Infants and Toddlers with Disabilities

Section 634—Eligibility

Topic Addressed: State Participation

- Letter dated August 13, 2002 to individual, (personally identifiable information redacted), clarifying that participation by States in Part C is voluntary.

Section 636—Individualized Family Service Plan

Topic Addressed: Natural Environments

- Letter dated July 30, 2002 to individual, (personally identifiable information redacted), regarding the history of implementation of the natural environments requirements of Part C of the IDEA since the early intervention program was originally enacted, and clarifying that, based on the child's individualized family services plan (IFSP), appropriate services can be provided in other environments.

Part D—National Activities to Improve Education of Children with Disabilities

Subpart 2—Coordinated Research, Personnel Preparation, Technical Assistance, Support, and Dissemination of Information.

Section 687—Technology Development, Demonstration, and Utilization; and Media Services

Topic Addressed: Captioning

- Letter dated August 8, 2002 to House Education and Workforce Committee Chairman John Boehner, generally describing the process by which grant awards are made under the IDEA to provide support for the captioning of educational, news, and informational television, videos, and materials.

Other Letters Relevant to the Administration of IDEA Programs

Topic Addressed: Child with a disability

- Letter dated July 12, 2002 to U.S. Senator Mary L. Landrieu, regarding the identification and evaluation of handicapped persons under Section 504 of the Rehabilitation Act of 1973.

Topic Addressed: Accountability for Results

- Letter dated August 13, 2002 to Dr. Lucille Linde, clarifying that the Department of Education does not have the authority to mandate the use of specific assessment and instructional/intervention programs in public schools and that these decisions are made at the State and local school district levels.
- Dear Colleague letter dated July 24, 2002, regarding the implementation of the No Child Left Behind Act and statewide accountability systems, and providing guidance on adequate yearly progress.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable

Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/legislation/FedRegister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–800–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html.*

(Catalog of Federal Domestic Assistance Number 84.027, Assistance to States for Education of Children with Disabilities)

Dated: February 5, 2003.

Robert H. Pasternack,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 03–3257 Filed 2–7–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–206–001]

ANR Pipeline Company; Notice of Compliance Filing

February 4, 2003.

Take notice that on January 30, 2003, ANR Pipeline Company (ANR), tendered for filing FERC Gas Tariff, Second Revised Volume No. 1, Substitute Fourth Revised Sheet No. 161A.02, with an effective date of January 16, 2003.

ANR states that the tariff sheet is being filed in compliance with the Commission's January 15, 2003 order implementing changes to ANR's Capacity Release provisions of the General Terms and Conditions of its FERC Gas Tariff.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Protest Date: February 12, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–3149 Filed 2–7–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–246–000]

CenterPoint Energy Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

February 4, 2003.

Take notice that on January 31, 2003., CenterPoint Energy Gas Transmission Company (CEGT) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, First Revised Sheet No. 560 and Original Sheet No. 560A, to be effective March 3, 2003.

CEGT states that the purpose of this filing is to revise the provisions of the General Terms and Conditions of CEGT's Tariff relating to capacity releases where the releasing shipper is not creditworthy.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.314 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Comment Date: February 12, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–3151 Filed 2–7–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–200–095]

CenterPoint Energy Gas Transmission Company; Notice of Negotiated Rates

February 4, 2003.

Take notice that on January 30, 2003., CenterPoint Energy Gas Transmission Company (CEGT) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets to be effective February 1, 2003:

First Revised Sheet No. 659
Original Sheet No. 660A
First Revised Sheet No. 660
Original Sheet No. 660B

CEGT states that the purpose of this filing is to reflect an amendment to an existing negotiated rate transaction.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.314 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Comment Date: February 12, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–3155 Filed 2–7–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–200–096]

CenterPoint Energy Gas Transmission Company; Notice of Negotiated Rates

February 4, 2003.

Take notice that on January 30, 2003., CenterPoint Energy Gas Transmission Company (CEGT) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, First Revised Sheet No. 685, Original Sheet No. 890, and Sheet Nos. 891–1999, to be effective March 1, 2003.

CEGT states that the purpose of this filing is to describe the provisions of a new negotiated rate transaction and also to submit a non-conforming service agreement along with revised tariff sheets to implement such transaction.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.314 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Comment Date: February 12, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–3156 Filed 2–7–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–383–046]

Dominion Transmission, Inc.; Notice of Negotiated Rates

February 4, 2003.

Take notice that on January 29, 2003, DTI tendered for filing the following tariff sheet for disclosure of a recently negotiated transaction with Sithe Energy Marketing, LP:

Fourth Revised Sheet No. 1400

DTI states that the tariff sheet relates to a specific negotiated rate transaction between DTI and Sithe Energy Marketing, LP. The transaction provides Sithe Energy Marketing, LP with firm transportation service and conforms to the forms of service agreement contained in DTI's tariff. The term of the agreement is February 1, 2003, through January 31, 2004.

DTI states that copies of its letter of transmittal and enclosures have been served upon DTI's customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.314 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Comment Date: February 10, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–3157 Filed 2–7–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP03–42–000]

Gulf South Pipeline Company, LP; Notice of Application

February 4, 2003.

Take notice that on January 24, 2003, Gulf South Pipeline Company, LP (Gulf South), 20 East Greenway Plaza, Houston, Texas 77046, filed in Docket No. CP03–42–000, an application pursuant to Sections 7(c) of the Natural Gas Act (NGA), as amended, and part 157 of the regulations of the Federal Energy Regulatory Commission (Commission), to increase the maximum allowable operating pressure (MAOP) of its Index 135 transmission facility in Calcasieu Parish, Louisiana. Gulf South states that the increase will provide sufficient pressure to ensure service to existing markets, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Specifically, Gulf South states that the increase in MAOP will result in an increase in Index 135's daily design capacity flowing north to south, 148 mmcf/d and on the south to north flow, 69 mmcf/d. Accordingly, the uprate allows Gulf South to continue to serve its traditional markets while augmenting deliverability and delivery by utilizing gas flowing from Index 201–9 for north to south flows.

Any questions concerning this application may be directed to J. Kyle Stephens, Director of Certificates, Gulf

South Pipeline Company, LP, 20 East Greenway Plaza, Houston, Texas 77046, at (713) 544–7309 or fax (713) 544–4818 or email: *kyle.stephens@gulfsouthpl.com*.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10) by the comment date, below. A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

Comment Date: February 25, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–3140 Filed 2–7–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–245–000]

Kinder Morgan Interstate Gas Transmission LLC; Notice of Tariff Filing

February 4, 2003.

Take notice that on January 29, 2003., Kinder Morgan Interstate Gas Transmission LLC (KMIGT) tendered for filing to become part of KMIGT's FERC Gas Tariff, Fourth Revised Volume Nos. 1–A and 1–B, the tariff sheets listed in Appendix A to the filing, to be effective March 1, 2003..

KMIGT states that it is making this filing pursuant to Section 4 of the Natural Gas Act, 15 U.S.C. 717c, and Section 154.202 of the regulations of the Federal Energy Regulatory Commission (Commission) (18 CFR 54.202). KMIGT submits these tariff sheets to: (1) Implement a new interruptible storage-based park and loan (S–PALS) service under Rate Schedule S–PALS; and, (2) revise certain currently effective tariff sheets to incorporate the S–PALS service.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.314 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Comment Date: February 10, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–3150 Filed 2–7–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–247–000]

National Fuel Gas Supply Corporation; Notice of Tariff Filing

February 4, 2003.

Take notice that on January 31, 2003., National Fuel Gas Supply Corporation (National) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, Fifty First Revised Sheet No. 9, to become effective February 1, 2003.

National states that under Article II, Section 2, of the settlement, it is required to recalculate the maximum Interruptible Gathering (IG) rate semi-annually and monthly. Further, National is required to charge the recalculated monthly rate on the first day of the following month if the result is an IG rate more than 2 cents above or below the IG rate as calculated under Section 1 of Article II. The recalculation produced an IG rate of $0.25 per dth. In addition, Article III, Section 1 states that any overruns of the Firm Gathering service provided by National shall be priced at the maximum IG rate.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.314 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Comment Date: February 12, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–3152 Filed 2–7–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP85–60–015]

Overthrust Pipeline Company; Notice of Report of Refunds

February 4, 2003.

Take notice that on January 30, 2003, Overthrust Pipeline Company, tendered for filing a refund report.

Overthrust states that the report documents refunds of amounts pertaining to and detailing the Deferred Income Tax (DIT) refund payments for the year 2002.

Overthrust states that it is filing the refund report pursuant to a Commission order dated May 21, 1991, Order Approving Settlement with Modifications, in Docket Nos. RP85–60–000 and -002. Overthrust explains that Article V of the settlement, as modified, requires Overthrust to file an annual report 60 days after making the actual DIT refunds.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Comment Date: February 11, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–3154 Filed 2–7–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–402–003]

Paiute Pipeline Company; Notice of Compliance Filing

February 4, 2003.

Take notice that on January 31, 2003, Paiute Pipeline Company (Paiute) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1–A, the following tariff sheets, to become effective December 1, 2002:

Seventh Revised Sheet No. 63C, Fifth Revised Sheet No. 89.
Second Revised Sheet No. 89A, Original Sheet No. 89B.
Fifth Revised Sheet No. 111, Fifth Revised Sheet No. 112.
Fourth Revised Sheet No. 113, Third Revised Sheet No. 113A.

Paiute indicates that the purpose of its filing is to comply with the directives of the letter order issued on December 23, 2002 in Docket Nos. RP00–402–001 and RP00–402–002, concerning Paiute's compliance with Order No. 637.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Protest Date: February 12, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–3147 Filed 2–7–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–41–001]

PG&E Gas Transmission, Northwest Corporation; Notice Compliance Filing

February 4, 2003.

Take notice that on January 29, 2003, PG&E Gas Transmission, Northwest Corporation (GTN) tendered for filing supporting documentation regarding its shippers' creditworthiness requirements in compliance with the Commission's January 24, 2003. Order on Complaint.

GTN states that a copy of this filing has been served upon its customers and interested state regulatory commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Comment Date: February 11, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–3153 Filed 2–7–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–420–000]

Red Lake Gas Storage, L.P.; Notice of Meeting With the Hualapai Nation Regarding the Proposed Red Lake Gas Storage Project

February 4, 2003.

The staff of the Federal Energy Regulatory Commission (Commission) is issuing this notice to announce the date and location of a meeting with the Hualapai Nation to address certain issues regarding the proposed Red Lake Gas Storage Project. The meeting will be held on February 12, 2003, at 1 pm, at the Hualapai Nation's Tribal Multipurpose Building in Peach Springs, Arizona 86434. This is a rescheduled meeting that was supposed to have been held on January 24, 2003.

The Commission staff will be preparing an environmental assessment (EA) for Red Lake Gas Storage, L.P.''s (Red Lake) proposed project in Mohave County, Arizona, in cooperation with the U.S. Department of the Interior, Bureau of Land Management (BLM), Arizona Department of Environmental Quality (ADEQ), and the Arizona Game and Fish Department (AGFD). The planned facilities would consist of two solution-mined underground salt caverns, about 52 miles of various diameter pipeline, a 25,000-horsepower (hp) compressor station, a 9,000-hp compressor station, four water withdrawal wells, four brine disposal wells, and appurtenant facilities. The EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

In view of the potential for impacts to resources of special concern to the Hualapai Nation resulting from construction of the proposed project, the meeting will not be open to the public. Attendance at the meeting will be limited to the Hualapai Tribal Council, members of the Hualapai Tribe, and representatives of the Commission, BLM, ADEQ, AGFD, and Red Lake.

Magalie R. Salas,

Secretary.

[FR Doc. 03–3139 Filed 2–7–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER01–3109–000 and ER01–3109–001]

Renaissance Power, L.L.C.; Notice of Issuance of Order

February 4, 2003.

Renaissance Power, L.L.C. (Renaissance), a wholly-owned subsidiary of Dynegy, Inc., submitted for filing a rate schedule under which Renaissance will engage in wholesale electric power and energy transactions at market-based rates. Renaissance also requested waiver of various Commission regulations. In particular, Renaissance requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Renaissance.

On January 29, 2002, pursuant to delegated authority, the Director, Division of Tariffs and Rates—West, granted requests for blanket approval under part 34, subject to the following:

Any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Renaissance should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is February 14, 2003..

Absent a request to be heard in opposition by the deadline above, Renaissance is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of Renaissance, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Renaissances' issuances of securities or assumptions of liability.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at *http://www.ferc.gov* , using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number filed to access the document. Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. 03–3142 Filed 2–7–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP00–472–004, RP01–31–004, and RP02–443–002]

USG Pipeline Company; Notice of Tariff Filing

February 4, 2003.

Take notice that on January 28, 2003, USG Pipeline Company (USGPC) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Substitute First Revised Sheet No. 57, Substitute Original Sheet No. 57A, and Substitute First Revised Sheet No. 58, with an October 1, 2002 effective date.

USGPC states that the sole purpose of the instant filing is to incorporate onto the correctly paginated sheets tariff language which was accepted by the Commission's order issued September 25, 2002 in Docket Nos. RP00–472–001 and RP01–31–001, and in an unpublished Letter Order issued September 30, 2002 in Docket No. RP02–443–000.

USGPC states that complete copies of this filing are being provided to its sole customer, United States Gypsum Company, which receives service as certificated under part 157 of the Commission's regulations, and to interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and

Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Protest Date: February 10, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–3148 Filed 2–7–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP03–45–000]

Williston Basin Interstate Pipeline Company; Notice of Application

February 4, 2003.

Take notice that on January 29, 2003., Williston Basin Interstate Pipeline Company (Williston Basin), P.O. Box 5601, Bismarck, North Dakota 58506–5601, filed in Docket No. CP03–37–000, an application pursuant to Section 7(b) of the Natural Gas Act (NGA), as amended, and part 157 of the regulations of the Federal Energy Regulatory Commission (Commission), for permission and approval to abandon compression and appurtenant facilities in Johnson County, Wyoming, all as more fully set forth in the application which is on file with the Commission and open to public inspection. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''FERRIS'' link, select ''Docket #'' and follow the instructions (call 202–208–2222 for assistance).

Williston Basin proposes to abandon a leased 1,478 horsepower compressor unit and appurtenant facilities located within the Billy Creek Compressor Station in Johnson County. It is stated that the compressor unit was installed in 1999 by Williston Basin and owned by KCI, Inc. (KCI), in order for Williston Basin to gain access to additional gas supplies, and it was used to meet the requirements of a firm transportation agreeement. Williston Basin asserts that it leased the compressor unit from KCI for $150,000 per year. It is explained that the transportation agreement has expired, with an expiration date of December 20, 2002, and that Williston Basin no longer needs the compressor unit. Williston Basin states that it made the capacity available to its shippers, but that no shipper has expressed interest in acquiring the capacity at this time. It is asserted that Williston Basin would remove the compressor unit and return it to KCI in order to avoid incurring additional leasing costs. It is further asserted that removal of the compressor would have no adverse impact on Williston Basin's current operations or on its customers.

Any questions concerning this application may be directed to Keith A. Tigelaar, Director of Regulatory Affairs, at (701) 530–1560.

This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* , using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, please contact FERC Online Support at FERC OnlineSupport@ferc.gov or call toll-free at (866)206–3676, or, for TTY, contact (202)502–8659.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages intervenors to file electronically.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

Comment Date: February 25, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–3141 Filed 2–7–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC03–49–000, *et al.*]

The AES Corporation, *et al.*; Electric Rate and Corporate Filings

February 3, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. The AES Corporation, Mountainview Power Company, Mountainview Power Company, LLC, Sequoia Generating LLC

[Docket No. EC03–49–000]

Take notice that on January 28, 2003, The AES Corporation, Mountainview Power Company (Mountainview), Mountainview Power Company, LLC and Sequoia Generating LLC (Sequoia) tendered for filing with the Federal Energy Regulatory Commission (Commission) a Joint Application for Expedited Approval of the Disposition of Jurisdictional Facilities Under Section 203 of the Federal Power Act for the sale of certain jurisdictional assets of Mountainview to Sequoia.

Comment Date: February 18, 2003.

2. Arizona Public Service Company

[Docket No. ER99–3288–009]

Take notice that on January 30, 2003, Arizona Public Service Company (APS) tendered for filing the final Quarterly Refund payments to eligible wholesale customers under the Company's Fuel Cost Adjustment Clause (FAC) from reparation payments made by Burlington Northern and Santa Fe Railway Company.

A copy of this filing has been served upon the affected parties, the California Public Utilities Commission, and the Arizona Corporation Commission.

Customer Name	APS–FPC/ FERC Rate Schedule
Electrical District No. 3	12
Tohono O'odham Utility Authority	52
Arizona Electric Power Cooperative	57
Wellton-Mohawk Irrigation and Drainage District	58
Arizona Power Authority	59
Colorado River Indian Irrigation Project	65
Electrical District No. 1	68
Arizona Power Pooling	70
Town of Wickenburg	74
Southern California Edison Company	120
Electrical District No. 6	126
Electrical District No. 7	128
City of Page	134
Electrical District No. 8	140
Aguila Irrigation District	141
McMullen Valley Water Conservation and Drainage District	142
Tonopah Irrigation District	143
Citizens Utilities Company	207
Harquahala Valley Power District	153
Buckeye Water Conservation and Drainage District	155
Roosevelt Irrigation District	158
Maricopa County Municipal Water Conservation District	168
City of Williams	192
San Carlos Indian Irrigation Project	201
Maricopa County Municipal Water Conservation District at Lake Pleasant	209

Comment Date: February 20, 2003.

3. NewEngland Power Pool, ISO New England, Inc.

[Docket No. ER02–2330–008]

Take notice that on January 28, 2003, ISO New England, Inc., submitted its notice in the above docket of the Designated Congestion Areas (DCAs) and applicable DCA threshold values that will be utilized for calendar year 2003 and has proposed that such designations be effective only after this Commission's order on the informational filing. The NEPOOL Participant Committee joined in that filing for the purposes stated therein.

The ISO has requested that the Commission act no later than February 28, 2003, to allow implementation for the April 2003 markets.

Comment Date: February 18, 2003.

4. PJM Interconnection, L.L.C.

[Docket No. ER02–2470–001]

Take notice that on January 30, 2003, in compliance with the Commission's October 15, 2002 letter order in this proceeding, PJM Interconnection, L.L.C., (PJM) submitted for filing a substitute interconnection service agreement between PJM and National Institutes of Health and a refund report.

PJM states that copies of this filing were served upon all persons on the official service list and National Institutes of Health.

Comment Date: February 20, 2003.

5. PJM Interconnection, L.L.C.

[Docket No. ER02–2471–001]

Take notice that on January 30, 2003, in compliance with the Commission's October 15, 2002 letter order in this proceeding, PJM Interconnection, L.L.C., (PJM) submitted for filing two substitute interconnection service agreements between PJM and PPL West Earl, L.L.C., one notice of cancellation, and a refund report.

PJM states that copies of this filing were served upon all the persons designated on the official service list and PPL West Earl, L.L.C.

Comment Date: February 20, 2003.

6. PJM Interconnection, L.L.C.

[Docket No. ER02–2472–001]

Take notice that on January 30, 2003, in compliance with the Commission's October 15, 2002 letter order in this proceeding, PJM Interconnection, L.L.C., (PJM) submitted for filing two substitute interconnection service agreements between PJM and Tosco Corporation and Tosco Refining Company, one notice of cancellation, and a refund report.

PJM states that copies of this filing were served upon all persons on the official service list and the parties to the agreements.

Comment Date: February 20, 2003.

7. PJM Interconnection, L.L.C.

[Docket No. ER02–2478–001]

Take notice that on January 30, 2003, in compliance with the Commission's October 16, 2002 letter order in this proceeding, PJM Interconnection, L.L.C., (PJM) submitted for filing a substitute interconnection service agreement between PJM and Global Winds Harvest, Inc and P&T Technology AG and a refund report.

Copies of this filing were served upon all persons on the official service list and the parties to the agreement.

Comment Date: February 20, 2003.

8. PJM Interconnection, L.L.C.

[Docket No. ER02–2491–002]

Take notice that on January 30, 2003, PJM Interconnection, L.L.C., (PJM) amended its compliance filing made January 24, 2003 in Docket No. ER02–2491–001 to withdraw an interconnection service agreement designated as Substitute Service Agreement No. 727 included in the compliance filing.

PJM states that copies of this filing were served upon all the persons on the official service list and PPL Martins Creek LLC, the party to the interconnection service agreement.

Comment Date: February 20, 2003.

9. Southern Company Services, Inc.

[Docket Nos. ER03–211–001 and ER03–212–001]

Take notice that on January 30, 2003, Southern Company Services, Inc. (SCS), as agent for Georgia Power Company (Georgia Power), tendered for filing an amendment to SCS's filing in Docket No. ER03–211–000 of an Interconnection Agreement by and between Southern Power Company (Southern Power) and Georgia Power for Southern Power's McIntosh CC Unit 1 and an amendment to SCS's filing in Docket No. ER03–212–000 of an Interconnection Agreement by and between Southern Power and Georgia Power for Southern Power's McIntosh CC Unit 2, as service agreements under Southern Operating Companies' Open Access Transmission Tariff (FERC Electric Tariff, Fourth Revised Volume No. 5).

The amendment contains SCS's response to the December 16, 2002, letter issued in Docket Nos. ER03–211–000 and ER03–212–000 by Mr. Steve P. Rodgers, Director, Division of Tariff and Market Development—South.

Comment Date: February 20, 2003.

10. Las Vegas Cogeneration II, L.L.C.

[Docket No. ER03–222–002]

Take notice that on January 30, 2003, Las Vegas Cogeneration II, L.L.C., filed substitute pages for the proposed market-based rate wholesale power sales rate schedule that LV Cogen filed with the Federal Energy Regulatory Commission in the referenced docket on November 25, 2002.

Comment Date: February 20, 2003.

11. Ameren Services Company

[Docket No. ER03–326–001]

Take notice that on January 30, 2003, Ameren Services Company (ASC) tendered for filing a Network Integration Transmission Service Agreement and Network Operating Agreement between ASC and Ameren Energy Marketing Company. ASC asserts that the purpose of the Agreements is to replace the unexecuted Agreements in Docket No. ER03–326–000 with the executed Agreements.

Comment Date: February 20, 2003.

12. Automated Power Exchange, Inc.

[Docket No. ER03–456–000]

Take notice that on January 29, 2003, Automated Power Exchange, Inc. (APX) submitted for filing an annual report for 2002.

Comment Date: February 20, 2003.

13. Oklahoma Gas and Electric Company

[Docket No. ER03–457–000]

Take notice that on January 29, 2003, Oklahoma Gas and Electric Company (OG&E) submitted for filing a service agreement for power sales (the Agreement) between OG&E and The City of Paris, Arkansas (Paris) under OG&E's Power Sales Tariff.

OG&E requests an effective date of February 1, 2003 for the Agreement. Accordingly, OG&E requests waiver of the Commission's notice requirements. Copies of this filing were served upon Paris and the Oklahoma Corporation Commission.

Comment Date: February 19, 2003.

14. American Electric Power Service Corporation

[Docket No. ER03–458–000]

Take notice that on January 30, 2003, the American Electric Power Service Corporation (AEPSC) tendered for filing an executed Interconnection and Operation Agreement and Memorandum of Understanding between Indiana Michigan Power Company and Berrien Energy Center, LLC. The agreement is pursuant to the AEP Companies' Open Access Transmission Service Tariff (OATT) that has been designated as the Operating Companies of the American Electric Power System FERC Electric Tariff Third Revised Volume No. 6, effective July 31, 2001.

AEP requests an effective date of March 29, 2003. AEPSC states that a copy of the filing was served upon Berrien Energy Center, LLC, the Indiana Utility Regulatory Commission and Michigan Public Service Commission.

Comment Date: February 20, 2003.

15. Ameren Services Company

[Docket No.ER03–459–000]

Take notice that on January 30, 2003, Ameren Services Company (ASC) tendered for filing executed Service Agreements for Firm Point-to-Point Services between ASC and Ameren Energy Marketing Company and Ameren Energy, Inc.(2). ASC asserts that the purpose of the Agreements is to permit ASC to provide transmission services to Ameren Energy Marketing Company and Ameren Energy, Inc. pursuant to Ameren's Open Access Transmission Tariff.

Comment Date: February 20, 2003.

16. Ameren Services Company

[Docket No. ER03–460–000]

Take notice that on January 30, 2003, Ameren Services Company (ASC) tendered for filing an unexecuted Service Agreement for Firm Point-to-Point Services between ASC and Cinergy Services, Inc. ASC asserts that the purpose of the Agreement is to permit ASC to provide transmission service to Cinergy Services, Inc. pursuant to Ameren's Open Access Transmission Tariff.

Comment Date: February 20, 2003.

17. Progress Energy Service Company on behalf of Progress Energy Carolinas

[Docket No. ER03–461–000]

Take notice that on January 30, 2003, Progress Energy Service Company on behalf of Progress Energy Carolinas (Progress Carolinas) tendered for filing a Service Agreement for Network Integration Transmission Service and a Network Operating Agreement with The Town of Waynesville, NC. Service to this Eligible Customer will be in accordance with the terms and conditions of the Open Access Transmission Tariff filed on behalf of Progress Carolinas.

Progress Carolinas is requesting an effective date of January 1, 2003 for this Service Agreement. Progress Carolinas states that a copy of the filing was served upon the North Carolina Utilities Commission and the South Carolina Public Service Commission.

Comment Date: February 20, 2003.

18. PSI Energy, Inc.

[Docket No.ER03–462–000]

Take notice that on January 30, 2003, PSI Energy, Inc. (PSI), tendered for filing the Transmission and Local Facilities (T&LF) Agreement Calendar Year 2001 Reconciliation between PSI and Wabash Valley Power Association, Inc., and between PSI and Indiana Municipal Power Agency. The T&LF Agreement has been designated as PSI's Rate Schedule FERC No. 253.

Comment Date: February 20, 2003.

19. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER03–463–000]

Take notice that on January 30, 2003, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted for filing Notices of Succession of certain Transmission Service Agreements and Network Integration Transmission Service and Operating Agreements entered into by and between (I) Michigan Electric Transmission Company (METC) or Michigan Electric Transmission Company, LLC (Michigan Transco LLC) and various transmission customers; (ii) International Transmission Company (International Transmission) and its corporate parent, DTE Energy Company (DTE Energy) and various transmission customers; and (iii) the Midwest ISO and various transmission customers.

The Midwest ISO has requested waiver of the sixty (60)-day effective date and has requested an effective date of January 1, 2003, the date the provision of transmission services across the transmission facilities of (I) METC or Michigan Transco LLC and (ii) International Transmission and DTE Energy under various ongoing Transmission Service Agreements and Network Transmission Service and Operating Agreements commenced under the Midwest ISO OATT.

The Midwest ISO has served copies of its filing on all affected customers. In addition, the Midwest ISO has electronically served a copy of this filing, without attachments, upon all Midwest ISO Members, Member representatives of Transmission Owners and Non-Transmission Owners, the Midwest ISO Advisory Committee participants, Policy Subcommittee participants, as well as all state commissions within the region. In addition, the filing has been electronically posted on the Midwest ISO's Web site at *http://www.midwestiso.org* under the heading ''Filings to FERC'' for other interested parties in this matter. The Midwest ISO will provide hard copies to any interested parties upon request.

Comment Date: February 20, 2003.

20. Ameren Services Company

[Docket No. ER03–464–000]

Take notice that on January 30, 2003, Ameren Services Company (Ameren Services) tendered for filing unexecuted Network Integration Transmission Service Agreements and Network Operating Agreements between Ameren Services and Wabash Valley Power Association and Soyland Power Cooperative, Inc. Ameren Services asserts that the purpose of the Agreements is to permit Ameren Services to provide transmission services to Wabash Valley Power Association and Soyland Power Cooperative, Inc. pursuant to Ameren's Open Access Tariff.

Comment Date: February 20, 2003.

21. Ameren Services Company

[Docket No.ER03–465–000]

Take notice that on January 30, 2003, Ameren Services Company (Ameren Services) tendered for filing Service Agreements for Network Integration Transmission Service and a Network Operating Agreement between Ameren Services and MidAmerican Energy Company. Ameren Services asserts that the purpose of the Agreements is to permit Ameren Services to provide transmission service to MidAmerican Energy Company pursuant to Ameren's Open Access Tariff.

Comment Date: February 20, 2003.

22. Tampa Electric Company

[Docket No. ER03–466–000]

Take notice that on January 30, 2003, Tampa Electric Company (Tampa Electric) tendered for filing a notice of cancellation of a rate schedule comprising of an expired interconnection agreement with Florida Power & Light Company (FPL). Tampa Electric proposes that the cancellation be made effective on October 11, 2002.

Tampa Electric states that copies of the filing have been served on FPL and the Florida Public Service Commission.

Comment Date: February 20, 2003.

23. Gulf States Energy, Inc.

[Docket No. ER03–467–000]

Take notice that on January 30, 2003, Gulf States Energy, Inc. (Gulf States Energy, Inc.) petitioned the Federal Energy Regulatory Commission (Commission) for acceptance of Gulf States Energy, Inc Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission regulations.

Gulf States Energy, Inc. states that it intends to engage in wholesale electric power and energy purchases and sales as a marketer. Gulf States Energy, Inc. is not in the business of generating or transmitting electric power. Gulf States Energy, Inc. is a Texas Corporation with its principal place of business and office in Dallas, Texas. Gulf States Energy, Inc. is involved in Fuel Oil and Diesel Marketing, and the consulting of electricity. Gulf States Energy, Inc. states it is not associated with any utilities, investor owned or otherwise. Gulf States Energy, Inc. is privately owned by three principals/investors from Dallas, Texas and Norman, Oklahoma.

Comment Date: February 20, 2003.

24. Duke/Louis Dreyfus L.L.C.

[Docket No. ER03–468–000]

Take notice that, on January 30, 2003, Duke/Louis Dreyfus L.L.C. tendered for filing with the Federal Energy Regulatory Commission (Commission) a Notice of Cancellation pursuant to the 18 CFR 35.15, in order to reflect the cancellation of its Market-Based Rate Schedule, designated as Rate Schedule FERC No. 1, originally accepted for filing in Docket No. ER96–108–000.

Comment Date: February 20, 2003.

25. American Electric Power Service Corporation

[Docket No. ER03–469–000]

Take notice that on January 30, 2003, the American Electric Power Service Corporation (AEPSC) tendered for filing an executed Interconnection and Operation Agreement between Appalachian Power Company and Mirant Danville, LLC. The agreement is pursuant to the AEP Companies' Open Access Transmission Service Tariff (OATT) that has been designated as the Operating Companies of the American Electric Power System FERC Electric Tariff Third Revised Volume No. 6, effective July 31, 2001.

AEP requests an effective date of March 29, 2003.

AEP states that a copy of the filing was served upon Mirant Danville and Virginia State Corporation Commission.

Comment Date: February 20, 2003.

26. DTE East China, LLC DTE Energy Trading, Inc.

[Docket No. ER03–470–000]

Take notice that on January 30, 2003, DTE East China, LLC (DTE East China) and DTE Energy Trading, Inc. (DTE Energy Trading) submitted for filing with the Federal Energy Regulatory Commission (Commission), pursuant to section 205 of the Federal Power Act, and part 35 of the Commission's regulations, an Application requesting that the Commission accept for filing an amendment to DTE East China's FERC Electric Tariff, Original Volume No. 3 (Tariff), which provides for the sale of energy and capacity at negotiated rates subject to a cost-based price ceiling, to permit DTE East China to make sales under the Tariff to its power marketing affiliate, DTE Energy Trading, on the condition that DTE Energy Trading will not re-sell such capacity and energy to an affiliate and any such re-sales to non-affiliates will be subject to the same cost-based price ceiling as currently applies to DTE East China.

Comment Date: February 14, 2003.

27. New York Independent System Operator, Inc.

[Docket No. ER03–471–000]

Take notice that on January 30, 2003, the New York Independent System Operator, Inc., (NYISO) filed revisions to Attachment H of its Open Access Transmission Tariff (OATT) to revise Table 1—Wholesale TSC Calculation Information. The sole change is to reflect a preciously approved change in the information for New York State Electric & Gas Corporation.

The NYISO has served a copy fo this filing upon all parties that have executed service agreements under the NYISO's Open Access Transmission Tariff or the Market Administration and Control Area Service Tariff and upon the New York State Public Service Commission.

Comment Date: February 20, 2003.

28. Southwest Power Pool, Inc.

[Docket No. ER03–472–000]

Take notice that on January 30, 2003, Southwest Power Pool, Inc. (SPP) submitted for filing an executed service agreement for Firm Point-to-Point Transmission Service with Western Resources d/b/a Westar Energy (Westar) and an executed service agreement for Firm Point-to-Point Transmission Service with Exelon Generation Company LLC (Exelon).

SPP seeks an effective date of January 1, 2003 for these service agreements. SPP states that Exelon and Westar were served with a copy of this filing.

Comment Date: February 20, 2003.

29. Southwest Power Pool, Inc.

[Docket No. ER03–473–000]

Take notice that on January 30, 2003, Southwest Power Pool, Inc. (SPP) submitted for filing an executed service agreement for Firm Point-to-Point Transmission Service with Southwest Public Service Company d/b/a as Xcel Energy (SPSC).

SPP seeks an effective date of January 1, 2003 for this service agreement. SPP states that SPSC was served with a copy of this filing.

Comment Date: February 20, 2003.

30. PECO Energy Company

[Docket No. ER03–64–001]

Take notice that on January 30, 2003, PECO Energy Company (PECO) made a compliance filing in the above docket in order to change the effective date of a Construction Agreement between PECO and Fairless Energy, LLC (Fairless Energy) related to the Fairless Energy Station, to be located in Fairless Hills, Pennsylvania, as required by the Commission's letter order of December 12, 2002. The Construction Agreement is designated as Service Agreement 792 under PJM Interconnection L.L.C.'s (PJM) FERC Electric Tariff Fourth Revised Volume No. 1. The new effective date for the Construction Agreement is December 20, 2002. Copies of this filing were served on Fairless Energy and PJM.

Comment Date: February 20, 2003.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* , using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. 03–3138 Filed 2–7–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Ready for Environmental Analysis and Soliciting Comments, Recommendations, Terms and Conditions, and Prescriptions

February 4, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Major New License.

b. *Project No.:* P–2574–032.

c. *Date filed*: April 29, 2002.

d. *Applicant:* Merimil Limited Partnership.

e. *Name of Project:* Lockwood Project.

f. *Location:* On the Kennebec River, in Kennebec County, at the City of Waterville and Town of Winslow, Maine. The project does not affect Federal lands.

g. *Filed Pursuant to*: Federal Power Act 16 U.S.C. 791 (a)—825(r).

h. *Applicant Contact:* Mr. F. Allen Wiley, c/o FLP Energy Maine Hydro LLC, 160 Capital Street, Augusta, ME 04330, (207) 623–8415.

i. *FERC Contact:* Nan Allen at (202) 502–6128 or *nan.allen@ferc.gov*.

j. *Deadline for filing comments, recommendations, terms and conditions, and prescriptions*: 60 days from the issuance of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Comments, recommendations, terms and conditions, and prescriptions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

k. This application has been accepted, and is ready for environmental analysis at this time.

l. The existing Lockwood Project consists of: (1) A 1,035-foot-long dam, incorporating three spillway sections at elevation 52.16 feet M.S.L. with flashboards, a 160-foot-long forebay intake structure, a rock island, and a bridge abutment; (2) a 450-foot-long forebay; (3) an 81.5-acre reservoir with a gross storage capacity of 250 acre-feet; (3) two powerhouses, one containing six generating units and the second containing one generating unit, for a total installed capacity of 6,915 kilowatts (kW); (4) 4,225 feet of buried and overhead transmission facilities; and (5) appurtenant facilities. The project is estimated to generate an average of 42.6 million kW hours annually. The existing dam and project facilities are owned by the applicant.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document.

For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

n. All reply comments must be filed with the Commission within 105 days from the date of this notice.

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must (1) bear in all capital letters the title ''COMMENTS'', ''REPLY COMMENTS'', ''RECOMMENDATIONS,'' ''TERMS AND CONDITIONS,'' or ''PRESCRIPTIONS;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

Procedural schedule and final amendments: The application will be processed according to the following Hydro Licensing Schedule. Revisions to the schedule will be made as appropriate.

Notice of the availability of the draft EIS July 2003 Initiate 10(j) process August 2003 Notice of the availability of the final EIS November 2003 Ready for Commission decision on the applicationMarch 2004

Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

Magalie R. Salas,

Secretary.

[FR Doc. 03–3143 Filed 2–7–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Ready for Environmental Analysis and Soliciting Comments, Recommendations, Terms and Conditions, and Prescriptions

February 4, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No.:* P–5334–019.

c. *Date filed*: October 2, 2001.

d. *Applicant:* Charter Township of Ypsilanti.

e. *Name of Project:* Ford Lake Hydroelectric Station.

f. *Location:* On the Huron River, Washtenaw County, within the township of Ypsilanti, Michigan. The project does not affect Federal lands.

g. *Filed Pursuant to*: Federal Power Act 16 U.S.C. 791 (a)—825(r).

h. *Applicant Contact:* Ms. Joann Brinker, Administrative Services/ Human Resources Director, Charter Township of Ypsilanti, 7200 South Huron River Driver, Ypsilanti, Mi 48197, (734) 484–0065.

i. *FERC Contact:* Monte TerHaar, (202) 502–6035 or *monte.terhaar@ferc.gov*.

j. *Deadline for filing comments, recommendations, terms and conditions, and prescriptions*: 60 days from the issuance of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Comments, recommendations, terms and conditions, and prescriptions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

k. This application has been accepted, and is ready for environmental analysis at this time.

l. The existing Ford Lake Hydroelectric Project consists of: (1) A 1,050 acre reservoir; (2) a 110-foot-long earth embankment dam; (3) a 46.5-foot-long powerhouse with 2 hydroelectric turbines; (4) a 172-foot-long spillway with six bays, each with a 6-foot by 8-foot sluice gate; (5) a 380-foot-long earth embankment; (6) a 175-foot-long emergency spillway; (7) two vertical shaft turbine/generator units with an installed capacity of 1,920 kilowatts at normal pool elevation; and (8) appurtenant facilities. The project operates run-of-river with a normal reservoir elevation maintained between 684.4 and 684.9 feet mean sea level. Average annual generation between 1995 and 2000 has been 8,664 megawatthours. Generated power is sold to Detroit Power. No new facilities are proposed.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

n. All reply comments must be filed with the Commission within 105 days from the date of this notice. Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must: (1) Bear in all capital letters the title ''COMMENTS'', ''REPLY COMMENTS'', ''RECOMMENDATIONS,'' ''TERMS AND CONDITIONS,'' or ''PRESCRIPTIONS;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

o. The current schedule for preparing the subject EA is as follows:

Milestone: Target Date.

Issue Notice of Ready for Environmental Analysis: January 2003.

Deadline for Filing Agency Recommendations March 2003.

Issue Notice of availability of EA: May 2003.

Public Comments on EA Due: August 2003.

Ready for Commission decision on the applicationSeptember 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–3144 Filed 2–7–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM02–16–000]

Hydroelectric Licensing Regulations Under the Federal Power Act; Notice of Post-Notice of Proposed Rulemaking Regional Workshops and Post-Workshop Drafting Session

February 4, 2003.

After the Federal Energy Regulatory Commission (Commission) issues its Notice of Proposed Rulemaking (NOPR) for a new hydroelectric licensing process, Commission staff will host regional stakeholder workshops and conduct a post-workshop stakeholder drafting session.

Both the regional stakeholder workshops and the post-workshop stakeholder drafting session are not intended to address issues pending in individually docketed hydropower cases before the Commission. Therefore, all participants are requested to address the agenda topics and avoid discussing the merits of individual proceedings.

Post-NOPR Regional Stakeholder Workshops

Five, two-day regional stakeholder workshops, and the one, one-day workshop will be held in the cities and on the dates and times listed in the following table. With the exception of the one-day workshop in Washington, DC, each two-day regional stakeholder workshop provides separate days for tribal and public attendance, although anyone may attend either or both of the workshops. Specific details regarding the structure and procedures for the regional stakeholder workshops will be posted on the Commission's Web site by February 27, 2003.

Location	Date/Time
Portland, Oregon Doubletree Hotel Columbia River 1401 N. Hayden Island Drive (503) 283–2111.	Public: March 13, 2003, 9 am—4 pm Tribes: March 14, 2003, 9 am—4 pm
Sacramento, California Red Lion Hotel Sacramento 1401 Arden Way (916) 922–8041.	Tribes: March 24, 2003, 9 am—4 pm Public: March 25, 2003, 9 am—4 pm
Charlotte, North Carolina Marriott Charlotte City Center 100 West Trade Street (704) 333–9000.	Public: March 27, 2003, 9 am—4 pm Tribes: March 28, 2003, 9 am—4 pm
Manchester, New Hampshire Holiday Inn Center of New Hampshire 700 Elm Street (603) 625–1000.	Tribes: March 31, 2003 9 am—4 pm Public: April 1, 2003, 9 am—4 pm
Milwaukee, Wisconsin Hyatt Regency Milwaukee 333 West Kilbourn Avenue (414) 276–1234.	Public: April 3, 2003, 9 am—4 pm Tribes: April 4, 2003, 9 am—4 pm
Washington, DC Federal Energy Regulatory Commission 888 First Street, NE Washington, DC 20426.	April 10, 2003, 9 am—4 pm

The goals of the post-NOPR regional stakeholder workshops are for Commission staff to: (1) Hear and consider stakeholder concerns about proposed rule language; and (2) find avenues for stakeholder consensus on solutions to those concerns. All interested persons are invited to attend these workshops.

Post-Workshop Stakeholder Drafting Session

A four-day post-workshop stakeholder drafting session will be held on April 29 and 30, and May 1 and 2, 2003., at 888 First Street, NE., Washington, DC.

The goal of the four-day post-workshop stakeholder drafting session is to develop proposed final rulemaking language. In addition to a full group discussion at the beginning of the first post-workshop drafting day, and at other appropriate times to be decided, participants will again be asked to take part in one of several drafting groups. Specific details regarding the time and location for the drafting session, as well as the subject matter and structure of the full group discussion, and drafting groups will be determined after the last regional workshop on April 10, and posted on the Commission's Web site soon thereafter.

All interested persons are invited to participate in the drafting session, and will need to pre-register on-line at *http://www.ferc.gov* /hydro/hydro2.htm, between April 18, and April 25, 2003.. Anyone without access to the web will need to pre-register by contacting Susan Tseng at (202) 502–6065. In both pre-registration procedures, participants must indicate their preference for a particular drafting group.

Obtaining Transcripts of the Regional Stakeholder Workshops, and Opportunities for Listening and Viewing the April 10, 2003, Workshop from Offsite

The Capitol Connection offers the opportunity for remote listening and viewing of the April 10, 2003, regional stakeholder workshop held in Washington, DC, which is available for a fee, live over the Internet, via C-Band Satellite. Persons interested in receiving the broadcast, or who need information on making arrangements should contact David Reininger or Julia Morelli at the Capitol Connection (703–993–3100) as soon as possible or visit the Capitol Connection Web site at http://www.capitolconnection.gmu.edu and click on ''FERC''.

The regional stakeholder workshops will be transcribed. Those interested in obtaining a copy of the transcript immediately for a fee should contact Ace-Federal Reporters, Inc. at (202) 347–3700, or (800) 336–6646. Two weeks after each regional workshop, the transcript will be available for free on the Commission's FERRIS system.

Anyone without access to the Commission's Web site and who have questions about the regional stakeholder workshops, and post-workshop stakeholder drafting session should contact Tim Welch at (202) 502–8760, or e-mail *timothy.welch@ferc.gov*.

Magalie R. Salas,

Secretary.

[FR Doc. 03–3145 Filed 2–7–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Regulations Governing Off-the-Record Communications; Public Notice

January 31, 2003.

This constitutes notice, in accordance with 18 CFR 385.2201(h), of the receipt of exempt and prohibited off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive an exempt or a prohibited off-the-record communication relevant to the merits of a contested on-the-record proceeding, to deliver a copy of the communication, if written, or a summary of the substance of any oral communication, to the Secretary.

Prohibited communications will be included in a public, non-decisional file associated with, but not part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such requests only when it determines that fairness so requires.

Any person identified below as having made a prohibited off-the-record communication should serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications will be included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of exempt and prohibited off-the-record communications recently received in the Office of the Secretary. These filings are available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

EXEMPT

Docket No.	Date Filed	Presenter or Requester
ER02–2330–001/002/003, EL00–62–052/053/054	1–28–03	Deborah B. Goldberg
CP02–396–000	1–30–03	Tony Froonjian
CP02–396–000	1–30–03	Jeff Wakefield
Project No. 184–000	1–31–03	Sharon Waechter

Magalie R. Salas,

Secretary.

[FR Doc. 03–3146 Filed 2–7–03; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7449–6]

Financial Assistance for an Environmental Professional Intern Program

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: The programmatic objective of this Environmental Professional Intern Program is to provide unique research training opportunities in cooperative study, applied research, research techniques, and developmental activities that would be of major benefit in advancing the number and diversity of environmental professionals in the workforce.

The U.S. Environmental Protection Agency (EPA) announces the availability of Federal Assistance to conduct an Environmental Professional Intern Program (Intern Program) to provide-on-the-job training for graduate and undergraduate students interested in careers in the environmental area. The need for wise stewardship of the Nation's environmental resources is increasing and with it a need to enlarge the pool of skilled environmental professionals while, at the same time, increasing the diversity of this pool. The EPA recognizes that there is a shortage of skilled environmental professionals. The programmatic objective of this Intern Program is to provide unique opportunities for cooperative study, research, and development that would increase the number and diversity of skilled engineers, scientists, policymakers, legal professionals, and managers in the environmental area.

This solicitation is to find a recipient organization to carry out this Intern Program. The student interns will be considered employees of the recipient organization rather than of the EPA during their training period. All student interns must be enrolled in an undergraduate or graduate program, or accepted into an undergraduate or graduate program that will commence within nine months of selection as a student intern. This recipient organization would be responsible for locating candidate interns, selecting the interns and administering the funding to the interns.

The EPA would identify the intern's opportunities at the Agency or at an EPA stakeholder facility, provide advice to the organization in the selection of the candidate interns, and provide space, technical guidance and training to the interns during their internship period at either an EPA facility or an EPA stakeholder facility. All projects awarded under this agreement must be of a research nature. They must relate to the detection, assessment, and evaluation of the effects on and risks to human health from hazardous substances and the detection of hazardous substances in the environment. The internships must be to conduct a survey or to research, collect, or analyze data which will be used to expand scientific knowledge or understanding of the subject studied. An example of an acceptable project would be to have the intern conduct an analysis of several communities using existing data from available databases and geographical information systems to determine demographics of the populations; numbers of facilities in the determined study area; types of emissions; quantities of specific chemicals; and other relevant data. The findings would be reported by the intern to his/her project advisor.

This program will start on or about June 17, 2003, for one year and may be renewed for two additional years.

DATES: Applications must be postmarked by U.S. Postal Service or date stamped by commercial courier service on or before 11:59 p.m., Eastern Time, April 17, 2003.

ADDRESSES: Applicants must submit one signed original plus two (2) copies of the application including all information required by the application kit.

By U.S. Postal Service: Linda K. Smith, EPA Intern Program, Office of Environmental Justice, U.S. Environmental Protection Agency, Mail Code—2201A, Washington, DC 20460.

By Federal Express, UPS, Airborne Express or other courier service: Linda K. Smith, EPA Intern Program, Office of Environmental Justice, U.S. Environmental Protection Agency, Room 2232 Ariel Rios Building—South, 1200 Pennsylvania Avenue NW., Washington, DC 20004, Telephone: 202–564–2602.

FOR FURTHER INFORMATION CONTACT: Linda K. Smith, U.S. EPA, Phone: 202–564–2602, E-mail: *smith.linda@epa.gov,* or by Fax: 202–501–1162.

SUPPLEMENTARY INFORMATION:

A. Background

The Environmental Professional Intern Program (Intern Program) is designed to provide undergraduate and graduate students from accredited universities and colleges with opportunities for environmental training experiences at EPA and other venues in which the student intern can receive a meaningful learning experience. The Intern Program will be managed by the Office of Environmental Justice. EPA managers at Headquarters, Regional Offices, and Laboratories will develop and sponsor new training or research projects that will further the student interns' understanding of environmental protection and health-related issues and abatement techniques. The projects are sufficiently narrow in scope to allow the student to complete the project in a 3–6 month period by working full-time during the summer and/or part-time during the school year. Students selected to receive an internship are awarded a stipend based on their level of education and length of the project period.

The EPA is expanding its institutional commitment to environmental stewardship and health protection. The Agency has identified several areas in which student interns would benefit by practical, on-the-job research-type training experiences. These areas include but are not limited to:

- Environmental Policy, Regulation, & Law—Training in this area includes participation in the research to develop background to review and evaluate existing policies and regulations, as well as to develop new policies.
- Environmental Management & Administration—This area focuses on the use of research techniques in how to implement and improve management goals or how to develop cooperative environmental management strategies.
- Environmental Science—This area focuses on the conduct of field studies and laboratory research.
- Public Relations and Communications—This broad category provides the intern with the opportunity to receive training in researching how public opinion affects environmental issues. The conduct of Internet surveys, developing tools for presentations, and presenting the findings in pamphlets to inform the public about environmental protection could be part of a training opportunity.
- Computer Programming and Development—The intern could research methods and develop computer programs for reaching different stakeholders.

A primary objective of the Intern Program is to support active stewardship of the environment, protection of the public health, and to sustain communities. The transfer of the EPA's technologies, techniques, and methods to the next generation of environmental professionals is to both increases their capability and to increase their diversity. This Intern Program offers unique opportunities to develop skills that can be transferred to interns through the establishment of this Internship Program. The award of this cooperative agreement will promote these objectives. All projects awarded under this agreement must relate to the detection, assessment, and evaluation of the effects on and risks to human health from hazardous substances and the detection of hazardous substances in the environment. The Internships awarded under this agreement must be of a research nature, *i.e.*, survey, research, collecting and analyzing data which will be used to expand scientific knowledge or understanding of the subject studied. The statutes under which the U.S. EPA will conduct this Intern Program include:

1. Comprehensive Environmental Response, Compensation and Liability Act; Section 311: CERCLA, Section 311(c) authorizes the EPA to fund research grants.

2. Clean Water Act, Section 104(b)(3): Conduct and promote the coordination of research, investigations, experiments, training, demonstration, surveys, and studies relating to the causes, extent, prevention, reduction, and elimination of water pollution.

3. Safe Drinking Water Act, Sections 1442(b)(3): Develop, expand, or carry out a program (that may combine training, education, and employment) for occupations relating to the public health aspects of providing safe drinking water.

4. Solid Waste Disposal Act, Section 8001(a): Conduct and promote the coordination of research, investigations, experiments, training, demonstrations, surveys, public education programs, and studies relating to solid waste management and hazardous waste management.

5. Clean Air Act, Section 103(b)(3): Conduct and promote the coordination and acceleration of research, investigations, experiments, demonstrations, surveys, and studies related to the causes, effects (including health and welfare effects), extent, prevention, and control of air pollution.

6. Toxic Substances Control Act, Section 10(a): Conduct research, development, and monitoring activities on toxic substances.

7. Federal Insecticide, Fungicide, and Rodenticide Act, Section 20(a): Conduct research on pesticides.

8. Marine Protection, Research, and Sanctuaries Act, Section 203: Conduct research, investigations, experiments, training, demonstrations, surveys, and studies relating to the minimizing or ending of ocean dumping of hazardous materials and the development of alternatives to ocean dumping.

B. Catalog of Federal Domestic Assistance (CFDA)

This EPA Intern Program is listed in the Catalog of Federal Domestic Assistance as No. 66.607 Training and Fellowships for the Environmental Protection Agency.

C. Program Description

The objective of the program is to provide research training opportunities to students interested in pursuing environmental careers. The proposed cooperative program will be administered by a single recipient in response to EPA-approved and funded intern opportunities at EPA locations, or at other EPA-approved locations of other Federal organizations or non-Federal organizations where the opportunity exists for students to participate in research training in environmental protection.

In cooperation with the EPA, the recipient will select and employ student interns to work on individual projects in response to internship opportunities established by the program offices within the EPA. Interns are not EPA employees but are employed by the recipient. The recipient, in cooperation with the EPA, will develop an orientation program that will explain the intern's roles, responsibilities, and limitations. The interns must be undergraduate students, graduate students, or college graduates who have been accepted into graduate programs and will begin their studies within 9 months of accepting an internship position. There is no specific course requirement for an intern but some preferred study areas include environmental science, earth science, environmental engineering, geodesy, chemistry, physics, oceanography, biology, fishery science, geography, resource economics, risk assessment, policy analysis, computer science, and law.

The EPA Code of Federal Regulations, 40 CFR 45.135(a), states that ''Trainees must be citizens of the United States, its territories, or possessions, or lawfully admitted to the United States for permanent residence.''

All internship projects will be carried out under a written research training plan with the technical guidance of a technical advisor from the EPA or other EPA-approved sponsoring organization. These projects must be designed to provide learning experiences for the interns that will make them competitive for employment opportunities in both the public and private sectors. Final details for individual training plans will be developed by the recipient in consultation with the individual technical advisor in accordance with the ''Statement of Substantial Involvement between EPA and the Recipient'' described below.

The maximum period that an intern may participate in the Intern Program on a full or part time basis with funding from the EPA is six months. The EPA may fund one additional three-month extension of an internship to enable the intern to complete a project.

The recipient, under other funding agreements, may establish other environmental protection internship opportunities with organizations other than the EPA. The EPA may choose to fund and sponsor these other internships or the recipient can obtain sponsorship or funding from non-EPA sources. Please note that under OMB Circular A–122 applicable to assistance agreements with nonprofit organizations, general fund-raising costs are not allowable.

There is no fixed number of internships per year under this program. The actual number will depend on opportunities and funding identified by offices within the EPA.

Internships may be located at the EPA or at facilities of other organizations with missions relating to environmental protection. If interns are required to relocate to either location for any portion of the internship, the EPA will provide financial assistance to the recipient in an amount up to $500 to offset the intern's relocation expenses. The finding of local housing and payment of housing costs is the responsibility of the intern. Interns will be provided individual project assignments for each internship.

Under this Cooperative Agreement, the Recipient will make extra effort in advertising and promoting the availability of internships at Minority Serving Institutions, emphasizing Native Americans, Hispanic Americans, African Americans, Asian Americans, and women.

D. Definitions

1. *Student Intern*—Individual trainee who will be provided with and perform internships under this cooperative agreement.

2. *Project Officer*—The EPA Project Officer is that individual specifically named by the EPA to manage this program.

3. *Technical Advisor*—The EPA employee responsible for providing technical guidance on the specific project(s) assigned to the intern and for monitoring the intern's individual development and progress. Because the student interns will be employees of the recipient organization, EPA technical advisors do not provide day-to-day supervision of student interns but they do oversee the work.

4. *Intern Opportunity/Project*—An opportunity for an internship which is documented and has funds obligated for its costs. In general, these opportunities will be assignments within existing EPA programs and ongoing projects and will be performed at the site of an EPA facility. In some cases, the assignment may involve a project at locations other than an EPA facility such as a community organization facility; a nonprofit organization facility; or a local government, state government, or tribal government facility.

5. *Travel Expenses of Interns*—All travel expense must be paid by the recipient. No EPA travel funds can be used. The funds will be included as part of the original funding to the Recipient at the time the internship project is initiated or at a later date by way of an amendment to the cooperative agreement. The EPA will provide travel and transportation for any intern assigned to EPA projects requiring field work as documented in the description of the Intern Opportunity and the Intern's training plan. Interns will complete Recipient's travel approval form prior to each trip, complete a travel reimbursement form at the conclusion of each trip, and a travel results report at the conclusion of each trip for the Recipient. The U.S. EPA Technical Advisor will sign all forms to acknowledge the trip is consistent with the intern's training plan prior to any action by the Recipient. Travel advances for interns will be available from the Recipient as needed. All travel and transportation required for field work will be paid by the Recipient out of funds included in the intern's amendment to the agreement.

6. *Training Expenses of Interns*—All training expense must be paid by the recipient. No EPA training funds can be used. The funds will be included as part of the original funding to the Recipient at the time the internship project is initiated or at a later date by way of an amendment to the cooperative agreement. The EPA will provide training for any intern when it is decided by the Technical Advisor that training is appropriate. The need for the training must be requested by the intern, approved by the Technical Advisor, prior to requesting the recipient to pay for the training expense. Interns will complete Recipient's training approval form prior to registration. When possible, the Recipient will pay for the training rather than requiring the intern to pay. When necessary, the intern may be asked to pay and then to complete a training reimbursement form at the conclusion, and a training results report at the conclusion of the event for the Recipient. The U.S. EPA Technical Advisor will sign all forms to acknowledge the training is consistent with the intern's training plan prior to

any action by the Recipient. All training will be paid by the Recipient out of funds included in the individual intern's amendment to the original agreement.

E. Maximum EPA Financial Participation in Stipends (Per Week) and General Background Requirements of Internships

1. $450 ($11.25/hr): 1–4 full years of academic study.

2. $550 ($13.75/hr): Undergraduate degree and acceptance in graduate school

3. $650 ($16.25/hr): Undergraduate Degree and superior academic standard (top 1/3, 2.9/4 GPA overall, & 3.5/4 GPA in Major) and accepted into graduate school.

4. $750 ($18.75/hr): Completed 60 hrs Graduate level or completed Masters or law degree and accepted into PhD or L.L.M. program.

Overtime pay is not allowed. In the event that overtime is required, the duration of the internship will be reduced or additional funds will be obligated or compensatory time will be given in lieu of overtime pay to compensate for it.

In the event that an intern voluntarily terminates or is terminated by the recipient for cause (*e.g.*, failing to carry out his or her training plan or engaging in disruptive behavior), the Recipient will make every effort to select another intern and, if not practicable, advises the EPA to de-obligate the remaining funds committed for the internship.

F. Funding Availability

The EPA funding for this Program will be a minimum of $500,000 during the first year. The amount of funding for the second and third years is indefinite but can be as much as $2 million each year. Each internship or group of internships, beyond the first, will be funded as a separate amendment to the master agreement. There is no set timetable for announcement of internships and they may occur throughout the year, depending on the EPA's programmatic decisions.

Matching Requirements—Cost sharing is not required for the internship program.

Type of Funding Instrument—The Environmental Protection Intern Program will be awarded as a Cooperative Agreement since the EPA anticipates that there will be substantial involvement between the EPA, the Recipient, and the Interns (after their selection).

G. Statements of Substantial Involvement Between U.S. EPA and the Recipient

In carrying out the work program set forth in the project description, EPA and the Recipient agree to meet the programmatic objective of this agreement: The programmatic objective of this intern program is to provide unique research training opportunities in cooperative study, applied research, research techniques, and developmental activities that would be of major benefit in advancing the number and diversity of environmental professionals. EPA involvement will consist of the following activities:

1. The EPA will provide descriptions of available student intern opportunities including academic background and prior work experience that would make the internship experience meaningful to the student.

2. EPA personnel will discuss internship opportunities with prospective interns and provide advice to the recipient relating to the ''fit'' between a prospective intern's academic background and work experience and the project available under the internship opportunity. However, EPA personnel will not select or make offers to prospective interns.

3. After considering the EPA's advice, and making its own assessment of the fit between a prospective intern's qualifications and interests and the internship opportunity, the Recipient is responsible for selecting the intern, making the offer of the internship, and arranging an orientation program and start date.

4. The recipient and the EPA will collaboratively develop the student intern's training plan. The EPA will provide a technical advisor to interact with each student intern as the intern carries out his or her training plan. The technical advisor shall provide technical guidance and support to the intern in developing the skills necessary to perform the work in the chosen environmental area and monitor the intern's progress towards completing his or her training plan. However, the EPA's technical advisor will not supervise the intern.

5. The EPA will provide liaison to interact with the Recipient and Senior Management on the progress of meeting the programmatic objectives of this Cooperative Agreement.

H. Eligibility Criteria

Any nonprofit organization as described in OMB Circular A–122 may submit a proposal. Please note that there are restrictions on the extent to which the EPA can award financial assistance to organizations described by section 501(c)(4) of the Internal Revenue Code who engage in lobbying.

I. Award Period

The initial Master Agreement will be for a period of up to three (3) years. The EPA will consider continued funding for the project beyond the first year upon: (a) Satisfactory progress toward the stated agreement goals, and the determination by the EPA that the continuation of the program would be in the best interest of the Government; and (b) availability of funds. This submission in no way obligates the EPA to extend this agreement, nor is this paragraph to be interpreted as a promise that future funds will be available. Stipend levels, and benefits may be adjusted for Cost of Living Allowances for each continuation year.

Multiple awards may be made from this announcement.

J. Administrative Costs

Funds to support the environmental professional intern program will be given directly to the Recipient. Administrative costs will be negotiated as part of the Master Agreement award and will be based on and paid on a per internship basis. These costs may be fixed, time dependent, intern stipend dependent, or a combination as proposed by the Recipient.

K. Indirect Costs

The total dollar amount of the indirect costs proposed in an application under this program must not exceed the indirect cost rate negotiated and approved by a cognizant Federal agency prior to the proposed effective date of the award or 100 percent of the total proposed direct costs dollar amount in the application, whichever is less.

L. Application Requirements

Each Prospective Recipient will submit a package containing completed:

1. SF–424 (including SF–424A & SF–424B),

2. A budget with necessary supporting details. This budget should be based on a hypothetical intern opportunity at a stipend level of $550 per week, with an allowance for required field trip travel of $2,000, and a relocation allowance of $500. Because it is anticipated that this agreement will be extended to include additional internships beyond the first, supporting information should be included to determine the full cost to the government of additional internships which may have any of the suggested stipend levels, have durations ranging from 12 weeks (3 month

summer intern) to 26 weeks (6 months), to 38 weeks (9 months), and be with or without relocation or travel allowances. This information should also contain details on what services and benefits are included (*i.e.*, sick leave, tax withholding, insurance, *etc.*) and their estimated cost to interns; as well as, what, if any, allowances are made for vacation leave and/or sick leave. Holidays observed by the office hosting the intern will be considered paid holidays.

3. Curriculum Vitae for each individual and critical senior staff assigned to the program.

4. Copy of a current approved Negotiated Indirect Cost Rate Agreement.

5. SF–LLL ''Disclosure of Lobbying Activities''.

6. ''Certifications Regarding Lobbying Activities''.

7. EPA Form 5700–49 ''Certification Regarding Debarment, Suspension, and Other Responsibility Matters''.

8. Proof of Status for First Time Eligible Non-Profit Applicants.

9. EPA Form 4700–4 ''Preaward Compliance Review report for All Applicants. * * *''

10. A narrative description of the applicant's proposed plan for carrying out its environmental professional internship program. This narrative will include:

(a) A description of the Intern Program, how they would implement it and conduct its operation. Alternatives and variations with regard to the timing of items 4 and 5 within the *G. Statements of Substantial Involvement between U.S. EPA and the Recipient* detailed above may be proposed.

(b) Proposed method of advertising for and pre-screening candidate Interns and supervising interns as they carry out their training plans.

(c) Proposed benefits offered to Interns (*e.g.*, tax withholding, health insurance, liability insurance, workman's compensation, *etc.*) as employees of the applicant.

(d) Past history of the prospective Recipient in carrying out similar programs, and how carrying out the environmental professional internship program will further the applicant's mission.

(e) Ability to use the Internet for all aspects of the intern program.

Application Forms and Kit

The Grant Application Kit can be obtained by calling 202–564–5310. It is also available in PDF format at *http://www.epa.gov/ogd/AppKit/index.htm*

Project Funding Priorities

The responsiveness of the application to the programmatic objectives of the Intern program as noted in the Summary section and restated in the Type of Funding Instrument section above will be considered in the evaluation process.

M. Evaluation Criteria

The proposals from applicants will be evaluated according to these evaluation factors. Your application must be complete to be considered.

- Description of the intern program, alternatives and variations with regard to timeliness of receiving a request for, and the placement of, an intern. (20)
- Proposed method of advertising for and pre-screening candidate interns, supervising interns as they carry out their training plans. (15)
- Proposed benefits (health insurance, workman's compensation, etc.) to interns. (15)
- Experience of applicant in managing a national program where students are recruited from various universities and colleges throughout the U.S. Past history of the recipient in carrying out similar programs, and how carrying out the internship program will further the recipient's mission. (40)
- Ability to use the internet for all aspects of the intern program. (10)

N. Selection Procedures

Each application will receive an independent, objective review by a panel qualified to evaluate the applications submitted. The Independent Review Panel, consisting of at least three individuals in addition to the EPA Federal Program Officer, will review, evaluate, and rank all applications based on the criteria stated above. The final decision on an award will be based upon the panel's overall ranking of the applications and a determination by the EPA Selecting Official that the Recipient's application meets the Project Funding Priorities.

O. Other Requirements

1. Federal Policies and Procedures

Recipients are subject to all Federal laws and Federal and EPA policies, regulations, and procedures applicable to Federal financial assistance awards.

2. Past Performance

Unsatisfactory performance under prior Federal awards will be considered in evaluating an applicant's proposal.

3. Preaward Activities

If applicants incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal or written assurance that may have been received, there is no obligation on the part of the EPA to cover preaward costs except to the extent authorized at 40 CFR 30.25(f).

4. No Obligation for Future Funding

If an application is selected for funding, the EPA has no obligation to provide any additional future funding in connection with the award. Renewal of an award to increase funding or extend the period of performance is at the total discretion of the EPA.

5. Delinquent Federal Debts

No award of Federal funds will be made to an applicant who has an outstanding delinquent Federal debt until either:

i. The delinquent account is paid in full,

ii. A negotiated repayment schedule is established and at least one payment is received, or

iii. Other arrangements satisfactory to the EPA are made.

6. Name Check Review

All nonprofit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or are presently facing criminal charges such as fraud, theft, perjury, or other matters which significantly reflect on the applicant's management honesty or financial integrity. Key individuals cannot be currently suspended, debarred, or otherwise ineligible from participating in Federal financial assistance.

7. Primary Applicant Certifications

All primary applicants must submit a completed form CD–511, ''Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-free Workplace Requirements and Lobbying,'' and the following explanations are hereby provided:

i. *Nonprocurement Debarment and Suspension.* Prospective participants (as defined at 15 CFR part 26, § 105) are subject to 15 CFR part 26, ''Nonprocurement Debarment and Suspension'' and the related section of the certification form prescribed above applies;

ii. *Drug-Free Workplace.* Recipients (as defined at 15 CFR part 26, § 605) are subject to 15 CFR part 26, subpart F, ''Government requirements for Drug-Free Workplace (Grants)'' and related section of the certification form prescribed above applies;

iii. *Anti-Lobbying.* Persons (as defined at 15 CFR part 26, § 105) are subject to the lobbying provisions of 31 U.S.C. 1352, ''Limitations on use of appropriated funds to influence certain Federal contracting and financial transactions,'' and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000 * * *''

iv. *Anti-Lobbying Disclosures.* Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL, ''Disclosure of Lobbying Activities,'' as required under 15 CFR part 28, appendix B.

8. False Statements

A False statement on an application is grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

9. Intergovernmental Review

Applications under this program are not subject to executive Order 12372, ''Intergovernmental Review of Federal Programs.''

10. Paperwork Reduction

Notwithstanding any other provision of law, no person is required to respond to nor will a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB control number.

11. Dispute Resolution Process

Any disputes concerning the award of this agreement will be handled in accordance with 40 CFR 30.63 and part 31, subpart F.

12. Confidential Business Information

Applicants should clearly mark information considered confidential, and the EPA will make final confidentiality decisions in accordance with Agency regulations at 40 CFR part 2, subpart B.

P. Restrictions

Short-Term Training—This is a short term training program for students. Interns will not be used to replace EPA employees formerly employed under the Office of Personnel Management student appointing authorities, to replace temporary or term appointments, or to replace or fill-in for full or part-time EPA positions vacated by the Voluntary Separation Program or Reduction in Force. Participants will not be selected or used to perform personal services. The Recipient and the Agency shall avoid any actions that create the appearance that the intern is a Federal employee or is being used by the EPA to obtain personal services. This would circumvent the civil service laws and reflect negatively on EPA staff using this participant in this manner. The relationship between the Recipient and Interns is that of Employer and Employees. The Recipient must provide a health benefits option, must deduct applicable state and federal taxes, and is responsible for payment, discipline, leave approval, termination, etc. for each Intern. Nothing in this agreement or its supplements will be deemed to create an employer-employee relationship between the EPA and an Intern. All interns must qualify as students to participate in the program.

Former EPA Employee Restrictions—Former EPA employees are not eligible for this program within two years of employment at the EPA. Former EPA employees must qualify as students to participate in the program.

Dated: February 4, 2003.

Barry E. Hill,

Director, Office of Environmental Justice.

[FR Doc. 03–3238 Filed 2–7–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 96–45; DA 03–25]

Wireline Competition Bureau Seeks Comment on Updating Line Counts and Other Limited Information Used in Calculating High-Cost Universal Service Support for Non-Rural Carriers

AGENCY: Federal Communications Commission.

ACTION: Notice; solicitation of comments.

SUMMARY: In this document, the Wireline Competition Bureau sought comment on how line count and other discrete input values should be updated in the universal service cost model used to estimate non-rural carrier's forward-looking economic costs of providing the services supported by the federal universal service high-cost support mechanism.

DATES: Comments are due on or before March 3, 2003. Reply comments are due on or before March 12, 2003.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Katie King or Thomas Buckley, Attorneys, Wireline Competition Bureau, Telecommunications Access Policy Division, (202) 418–7400, TTY (202) 418–0484.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Public Notice, CC Docket No. 96–45, released January 7, 2003. The Wireline Competition Bureau (Bureau) released an order adopting certain modifications to the forward-looking cost model for determining high-cost support for non-rural carriers. In particular, the Bureau incorporated specific technical improvements and translated a portion of the model from Turbo-Pascal to Delphi computer language. In that order, the Bureau also deferred using this revised version of the model to determine support amounts until the effective date of a Commission order in the separate proceeding addressing the non-rural high-cost support methodology adopted in the *Ninth Report and Order,* 64 FR 67416, December 1, 1999 which was remanded to the Commission by the United States Court of Appeals for the Tenth Circuit. The Bureau now seeks comment in this Public Notice on how line count and other discrete input values should be updated for purposes of determining support upon implementation of the revised version of the model.

On October 21, 1999, the Commission adopted two orders completing implementation plans for a new high-cost universal service support mechanism for non-rural carriers. The mechanism provides support based on the forward-looking economic cost of providing services eligible for support, as determined by the Commission's universal service cost model. The Commission also emphasized the importance of updating the inputs used in the cost model as technology and other conditions change. In the *2001 and 2002 Line Counts Update Orders,* 65 FR 81759, December 27, 2000 and 67 FR 3118, January 23, 2002, the Bureau updated the cost model with year-end line counts and other discrete input values for purposes of estimating forward-looking costs and determining support for the years 2001 and 2002, respectively.

Consistent with past precedent, the Bureau seeks comment on using year-end 2001 line counts filed July 31, 2002, as input values for purposes of estimating average forward-looking costs and determining support for non-rural carriers upon implementation of the Commission decision on the Tenth Circuit remand. In addition, the Bureau seeks comment on whether to continue to adjust high-cost support amounts each quarter using wire center line count data reported by carriers each quarter.

When line counts were updated in the past, the Bureau also used information obtained from the 1999 Data Request to allocate switched lines among the classes of switched service and to allocate special access lines to the appropriate wire centers. The Bureau seeks comment on continuing this line count disaggregation methodology. The Bureau also seeks comment on whether to apply the method used in past decisions for matching line count data to wire centers used in the model for purposes of calculating support.

Finally, in the *2002 Line Counts Update Order,* the Bureau also updated the model's input values with annually collected ARMIS data and traffic parameter data available from the National Exchange Carrier Association to estimate investment in general support facilities (GSF) and switching costs. The Bureau seeks comment on whether to update the tables in the model used to calculate GSF investment and switching costs using the same methodology employed in the *2002 Line Counts Update Order.*

Pursuant to § 1.415 and 1.419 of the Commission's rules, interested parties may file comments as follows: comments are due on or before March 3, 2003, and reply comments are due on or before March 12, 2003. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. See *Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121 (1998).

Comments filed through the ECFS can be sent as an electronic file via the Internet to *http://www.fc.gov/e-file/ecfs.html.* Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov,* and should include the following words in the body of the message, ''get form<get form<your e-mail address>.'' A sample form and directions will be sent in reply.

Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistronix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal service first-class mail, Express Mail, and Priority Mail should be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission.

Parties also must send three paper copies of their filing to Sheryl Todd, Telecommunications Access Policy Division, Wireline Competition Bureau, Federal Communications Commission, 445 12th Street, SW., Room 5–B540, Washington, DC 20554. In addition, commenters must send diskette copies to the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554.

Pursuant to § 1.1206 of the Commission's rules, 47 CFR 1.1206, this proceeding will be conducted as a permit-but-disclose proceeding in which ex parte communications are permitted subject to disclosure.

Federal Communications Commission.

Eric N. Einhorn,

Acting Division Chief, Wireline Competition Bureau Telecommunications Access Policy Division.

[FR Doc. 03–3158 Filed 2–7–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Guidance for the Use of Portable (Hand-Held) Radiological Instruments

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice of availability of final guidance.

SUMMARY: We (FEMA) have developed the final guidance for the use of portable (hand-held) radiological instruments, identified as FEMA–REP–22, for the detection of radioactive contamination on persons in association with peacetime nuclear accidents. Three documents pertaining to the final guidance are available for use.

ADDRESSES: You may obtain copies of the final guidance documents from the FEMA Distribution Center, (800) 480–2520, or *www.fema.gov/rrr/rep/fr.shtm.*

FOR FURTHER INFORMATION CONTACT: William F. McNutt, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2857, or (e-mail) *william.mcnutt@fema.gov.*

SUPPLEMENTARY INFORMATION: The three available documents are:

(a) Contamination Monitoring Guidance for Portable Instruments Used for Radiological Emergency Response to Nuclear Power Plant Accidents, FEMA–REP–22, (12 pages);

(b) Background Information on Contamination Monitoring Guidance for Portable Instruments Used for Radiological Emergency Response to Nuclear Power Plant Accidents (62 pages); and

(c) Statements of Consideration for Contamination Monitoring Guidance for Portable Instruments Used for Radiological Emergency Response to Nuclear Power Plant Accidents (12 pages).

We developed this guidance in response to a request from the Conference of Radiation Control Program Directors (CRCPD). The CRCPD asked us to develop portable instrument guidance that affords protection to the public equivalent to the portal monitor standard (FEMA–REP–21) that we established and published in the **Federal Register** on March 23, 1995 (60 FR 15290–15291).

We worked through the Federal Radiological Preparedness Coordinating Committee (FRPCC) and its Offsite Emergency Instrumentation Subcommittee to develop and coordinate the portal monitor standard and the guidance for portable instruments. We chair the FRPCC and, with the Department of Energy, co-chair the Offsite Emergency Instrumentation Subcommittee, which includes members from several Federal agencies. Members of the CRCPD's E–6 Committee (composed of State radiological health officials) participated in meetings of this Subcommittee as ex-officio members.

We made the draft guidance available to FEMA Regional staff, CRCPD constituents in all 50 States and the general public for review and comment. We have addressed and resolved their comments.

While we developed only one standard for portal monitors, we developed guidance for four (4) types of portable instruments because of the instrument-specific factors that influence the manner in which radiation is detected and measured. We developed the guidance for portable instruments through extensive empirical tests of different portable radiological instruments currently in use today by State and local government personnel. Despite instrument-specific differences between portal monitors and portable instruments, use of this guidance will afford protection to individuals equivalent to that afforded by the portal monitor standard.

Based on extensive consultation with Federal and State officials, the primary issue involving this guidance is the extended period of time required to monitor an individual adequately with some types of portable radiological instruments. Empirical studies undertaken since 1991 have substantiated per-person monitoring time frames for different types of radiological instruments ranging from 2.6 minutes to as high as 19 minutes (for a CD V–700 with standard GM side window probe) for total body scans to detect spot contamination. The planning criterion for monitoring individuals using a portable CD V–700 radiation survey instrument is 300 counts per minute (CPM) above background levels.

The range of times required to monitor individuals is critical, as is the need for State and local governments to provide sufficient resources to monitor at least 20% of the plume exposure pathway emergency planning zone (EPZ) population in about twelve (12) hours. This may require State and local governments with certain types of radiological instruments to re-examine their radiological emergency planning and preparedness for accidents involving commercial nuclear power plants. This issue is extensively documented and addressed in the three documents previously cited, and we provide suggestions on how State and local governments may address this issue and related resource requirements.

Dated: February 4, 2003.

Joe M. Allbaugh,

Director.

[FR Doc. 03–3185 Filed 2–7–03; 8:45 am]

BILLING CODE 6718–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 6, 2003.

A. Federal Reserve Bank of Boston (Richard Walker, Community Affairs Officer) 600 Atlantic Avenue, Boston, Massachusetts 02106-2204:

1. Butler Bancorp, MHC, Lowell, Massachusetts, and Butler Bancorp, Inc., Lowell, Massachusetts; to become bank holding companies by acquiring 100 percent of the voting shares of Butler Bank, Lowell, Massachusetts.

B. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045-0001:

1. Interchange Financial Services Corporation, Saddle Brook, New Jersey; to merge with Bridge View Bancorp, Englewood Cliffs, New Jersey, and thereby indirectly acquire Bridge View Bank, Englewood Cliffs, New Jersey.

C. Federal Reserve Bank of Minneapolis (Richard M. Todd, Vice President and Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480-0291:

1. Waumandee Bancshares, Ltd., Waumandee, Wisconsin; to become a bank holding company by acquiring 100 percent of the voting shares of Waumandee State Bank, Waumandee, Wisconsin.

Board of Governors of the Federal Reserve System, February 4, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–3178 Filed 2–7–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than February 24, 2003.

A. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. Ronald W. Plassman, Fort Wayne, Indiana; to acquire voting shares of Knisely Financial Corp., Butler, Indiana, and thereby indirectly acquire voting shares of Knisely Bank, Butler, Indiana.

Board of Governors of the Federal Reserve System, February 4, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–3179 Filed 2–7–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Federal Open Market Committee; Domestic Policy Directive of January 28 and 29, 2003

In accordance with § 271.25 of its rules regarding availability of information (12 CFR part 271), there is set forth below the domestic policy directive issued by the Federal Open Market Committee at its meeting held on January 28 and 29, 2003.[1]

The Federal Open Market Committee seeks monetary and financial conditions that will foster price stability and promote sustainable growth in output. To further its long–run objectives, the Committee in the immediate future seeks conditions in reserve markets consistent with maintaining the federal funds rate at an average of around 1¼ percent.

By order of the Federal Open Market Committee, February 3, 2003.

Vincent R. Reinhart,

Secretary, Federal Open Market Committee.

[FR Doc. 03–3242 Field 2–7–03; 8:45 am]

BILLING CODE 6210–01–S

[1] Copies of the Minutes of the Federal Open Market Committee meeting on January 28 and 29, 2003, which includes the domestic policy directive issued at the meeting, are available upon request to the Board of Governors of the Federal Reserve System, Washington, D.C. 20551. The minutes are published in the Federal Reserve Bulletin and in the Board's annual report.

FEDERAL TRADE COMMISSION

Public Forum: Spam Email

AGENCY: Federal Trade Commission (FTC).

ACTION: Notice announcing public forum.

SUMMARY: The FTC is planning to host a public forum to explore the issues regarding the proliferation of and potential solutions to unsolicited commercial email (''UCE'' or ''spam''). The forum will also look at how the unique qualities of spam contribute to and hinder both fraud and its prosecution.

DATES: The workshop will be held on April 30–May 2, 2003, from 8:30 a.m. to 5:30 p.m. at the Federal Trade Commission, 601 New Jersey Avenue, NW., Washington, DC. The event is open to the public, and there is no fee for attendance. Pre-registration is not required.

Requests to Participate as a Panelist: Written requests to participate as a panelist in the forum must be filed by March 25, 2003. For further instructions, please see the ''Requests to Participate as a Panelist in the Workshop'' section. Persons filing requests to participate as a panelist will be notified by April 8, 2003, if they have been selected.

ADDRESSES: Written requests to participate as a panelist in the forum should be submitted to: Secretary, Federal Trade Commission, Room 159, 600 Pennsylvania Avenue, NW., Washington, DC 20580. In the alternative, they may be emailed to *SpamForum@ftc.gov*.

FOR FURTHER INFORMATION CONTACT: Brian Huseman, Attorney, (202) 326–3320, or Lisa Tobin, Investigator, (202) 326–3218, Division of Marketing Practices, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580. A detailed agenda and additional information on the forum will be posted on the FTC's Web site, *www.ftc.gov*, by April 8, 2003.

SUPPLEMENTARY INFORMATION:

Background and Forum Goals

Unsolicited commercial email (''UCE'' or ''spam'') is any commercial electronic mail message that is sent, often in bulk, to a consumer without the consumer's prior request or consent. The very low cost of sending spam differentiates it from other forms of unsolicited marketing, such as direct mail or telemarketing. Those marketing techniques, unlike spam, impose costs on marketers that may serve to limit their use.

As a result of the low costs associated with sending bulk commercial email, the volume of spam that consumers and businesses receive is substantial and has continued to increase over time. A recent study by the Radicati Group, a market research group, estimated that 32 percent of the 7.3 billion email messages sent each day are spam and that the figure is likely to increase substantially in the future.[1] Another study recently conducted by the Symantec corporation found that 65 percent of those surveyed reported spending more than 10 minutes each day dealing with spam. Moreover, 37 percent of the survey respondents stated they received more than 100 spam email messages each week.[2] This increased volume of spam imposes financial and operational costs on Internet service providers (''ISPs''), burdens consumers, and impacts e-commerce generally.''

In addition, the increased volume of spam has increased the potential for fraud on the Internet, such as deceptive content within spam messages or deceptive means of sending email. Although not all spam is fraudulent, fraud operators have seized on the Internet's capacity to reach literally millions of consumers quickly and at a low cost through spam. Fraud operators also can misuse technology to conceal their identity. Many spam messages contain false information about the sender and where the message was routed from, making it difficult to trace the spam back to the actual sender. Spam messages often contain misleading subject lines that lead consumers to open email messages they otherwise would delete without reading. Thus, the proliferation of spam, and deceptive spam particularly, poses a threat to consumer confidence and participation in online commerce.

The Commission has taken law enforcement actions against deceptive spam and has engaged in several research efforts to explore how spam affects consumers and online commerce. For example, this year the Commission conducted a surf in which the FTC and law enforcement partners tested whether ''remove me'' or ''unsubscribe'' options in spam were being honored. The law enforcement agencies discovered that 63 percent of the removal representations were not honored.

Further, in its ''Spam Harvest,'' the Commission conducted an examination of what online activities place consumers at risk for receiving spam. The examination discovered that one hundred percent of the email addresses posted in chat rooms received spam; the first received spam only eight minutes after the address was posted. Eighty-six percent of the email addresses posted at newsgroups and Web pages received spam; as did 50 percent of addresses at free personal Web page services; 27 percent from message board postings; and nine percent of email service directories. The ''Spam Harvest'' also found that the type of spam received was not related to the sites where the email addresses were posted. For example, email addresses posted to investment-related newsgroups did not receive solely investment-related spam, but also received a large amount of adult content and work-at-home-spam.

In addition to law enforcement and research, the Commission has engaged in education efforts about how consumers and businesses can reduce the amount of unwanted spam they receive. These materials can be found on the FTC's Web site, *www.ftc.gov/spam*.

Despite the research the Commission has conducted, its law enforcement actions, and education initiatives, there are other topics concerning spam that could benefit from additional study. To explore the impact that spam has on consumers' use of email, email marketing, and the Internet industry, the

[1] *See www.radicati.com.*

[2] An article describing the survey can be found at: *http://rtnews.globetechnology.com/servlet/ArticleNews/tech/RTGAM/20021202/gtspammy/Technology/techBN/HYPERLINK* (visited Dec. 3, 2002).

Commission will convene a public forum on April 30–May 2, 2003. Email marketers, ''anti-spammers,'' ISPs, ISP abuse department personnel, spam filter operators, other email technology professionals, consumers, consumer groups, and law enforcement officials are especially encouraged to participate.

Panel #1 will consist of consumers, email marketers, anti-spammers, ISP abuse department personnel and filter programmers discussing their daily experiences with spam.

Panel #2 will focus on the email address gathering process and the implications that address gathering technology has on consumer participation in e-commerce and the Internet. The harvesting of email addresses from the Web, newsgroups and chat rooms will be discussed, along with lists available for sale. Panelists also will speak about the distribution of email to those lists through spamware. The panel also will address the issue of consent and disclosures in voluntarily obtaining consumers' email addresses.

Panel #3 will address the aspects of spam that can be falsified by senders, including false from and reply-to addresses, false routing information, deceptive subject lines, and fraudulent removal representations.

Panel #4 will explore the costs and benefits of spam to consumers, ISPs, and email marketers. Panelists will comment on the costs of sending spam relative to traditional forms of marketing. The amounts spent by ISPs on filtering, bandwidth, and customer service will be explored. How those ISP costs are passed onto consumers will be addressed, as well as consumers' costs in time and decreased Internet participation.

Panel #5 will cover security weaknesses inherent in email transfer technology and the way that spammers exploit these weaknesses. Open Relays, Open Proxies and FormMail Scripts will be discussed in terms of their legitimate purposes, costs to the open technology providers, use in sending spam, and processes for securing those weaknesses.

Panel #6 will address blacklists, which consist of lists of domain names or Internet Protocol (''IP'') addresses of suspected spammers. Maintained by private entities, the lists are used to block email from those names and IP addresses. Issues for the panel include standards for being placed on blacklists, how to remove one's IP address or domain name from a blacklist, and whether the use of such lists constitutes an unfair business practice.

Panel #7 will discuss nefarious files that are downloaded with the content of email messages, including viruses, Web beacons, and spyware.

Panel #8 will cover issues specific to wireless devices, including the nature of text-based messaging and wireless email. The economic burdens that recipients incur in per-message and per-minute service rates will be of particular interest, along with the international experience and forecasts for increased wireless messaging.

Panel #9 will explore current and proposed legislation, including U.S. federal and state bills. Consumer and ISP private right of action clauses and the preemption of state law by federal law will be issues of prominence, as well as the effect legislation might have on email marketing. The panel also will examine any constitutional limitations on legislation.

Panel #10 will examine proposed and current international spam legislation, including policy decisions behind those statutes. Panelists also will discuss their experience and plans for enforcing international laws.

Panel #11 will discuss recent private and governmental spam law enforcement actions and the challenges of litigating spam cases. Some of the challenges that will be discussed include cost-effectiveness, tracking spammers, collecting evidence across borders, and effecting relief against international entities.

Panel #12 will focus on best practices for e-mail senders and receivers. E-mail recipient topics will include keeping e-mail addresses private, evaluating privacy policies and consent terms, using filters and responding to removal requests. E-mail sender topics include providing removal mechanisms, providing valid ''from'' addresses, and using opt-in or confirmed recipient lists.

Panel #13 will explore evolving technologies that aim to eliminate spam or offset its negative effects. The technologies include filtering technology, such as white lists and bonded sender programs, among others.

Panel #14 will discuss possible structural changes to the way e-mail is sent and delivered, including new mail transfer protocols and proposals to reverse the cost model of e-mail.

Requests To Participate as a Panelist in the Forum

Those parties who wish to participate as panelists in the forum must notify the FTC in writing of their interest by March 25, 2003, either by mail to the Secretary of the FTC or by e-mail to *SpamForum@ftc.gov*. Requests to participate as a panelist should be captioned ''Spam Forum—Request to Participate, P024407.'' Parties are asked to include in their requests the name and number of the panel on which they would like to participate, a statement setting forth their expertise in or knowledge of the issues on which the panel will focus, and their contact information, including a telephone number, facsimile number, and e-mail address. If requesting by mail, please submit an original and two copies of each document. Panelists will be notified by April 8, 2003, whether they have been selected.

Using the following criteria, FTC staff will select a limited number of panelists to participate in the forum:

1. The party has expertise in or knowledge of the issues that are the focus of the forum.

2. The party's participation would promote a balance of interests being represented at the forum.

3. The party has been designated by one or more interested parties as a party who shares group interests with the designator(s).

In addition, there will be time during the forum for those not serving as panelists to comment or ask questions.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 03–3162 Filed 2–7–03; 8:45 am]

BILLING CODE 6750–01–U

FEDERAL TRADE COMMISSION

[Docket No. 9303]

Lentek International, Inc., et al.; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before March 5, 2003.

ADDRESSES: Comments filed in paper form should be directed to: FTC/Office of the Secretary, Room 159–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580. Comments filed in electronic form should be directed to: *consentagreement@ftc.gov*, as prescribed below.

FOR FURTHER INFORMATION CONTACT: Elena Paoli or Carol Jennings, FTC, Bureau of Consumer Protection, 600 Pennsylvania Avenue, NW., Washington, DC 20580, (202) 326–2974 or (202) 326–3010.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and § 3.25(f) of the Commission's Rules of Practice, 16 CFR 3.25(f), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for February 4, 2003), on the World Wide Web, at *http://www.ftc.gov/os/2003/02/index.htm.* A paper copy can be obtained from the FTC Public Reference Room, Room 130–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326–2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. Comments filed in paper form should be directed to: FTC/Office of the Secretary, Room 159–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580. If a comment contains nonpublic information, it must be filed in paper form, and the first page of the document must be clearly labeled ''confidential.'' Comments that do not contain any nonpublic information may instead be filed in electronic form (in ASCII format, WordPerfect, or Microsoft Word) as part of or as an attachment to e-mail messages directed to the following e-mail box: *consentagreement@ftc.gov*. Such comments will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice, 16 CFR 4.9(b)(6)(ii)).

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement to a proposed consent order by respondents Lentek International, Inc., Joseph Durek, individually, and Lou Lentine, individually and as an officer of the corporation.

The proposed consent order has been placed on the public record for thirty (30) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take other appropriate action or make final the agreement's proposed order.

This matter concerns practices related to the advertising, offering for sale, sale, and distribution of various air cleaning products and ultrasonic/electromagnetic pest control devices. The Commission's complaint charged that respondents violated the Federal Trade Commission Act, 15 U.S.C. 41 *et seq.*, by making numerous representations that were false and/or for which they lacked a reasonable basis of substantiation. These representations concerned the following: the ability of Lentek's Sila Air Cleaning Products to eliminate various pollutants from indoor air; the health benefits of using the Sila Air Cleaning Products; the ability of Lentek's PestContro products to repel or eliminate various animal or insect pests from a user's home or outdoor space; the ability of various PestContro products to eliminate animal or insect pests within a space of a given size; the ability of the electromagnetic devices to drive away pests by altering the electromagnetic field inside the walls and wiring of a home; the ability of Lentek's MosquitoContro Products to repel mosquitoes from a user's body; and that the MosquitoContro Products are an effective alternative to the use of chemical pesticides or other products formulated to kill or repel mosquitoes in the prevention of West Nile Virus.

Part I of the proposed order prohibits any representation that any air cleaning product will eliminate, remove, clear, clean, neutralize, sanitize, oxidize, control, or reduce any indoor air pollutant, or that use of such product will prevent, reduce the incidence of, or provide relief from any medical or health-related condition, unless respondents possess competent and reliable scientific evidence that substantiates the representation.

Part II of the proposed order prohibits any representation that PestContro products (or similar pest control products utilizing sonic, ultrasonic, and/or electromagnetic technology) will repel, control, or eliminate, temporarily or indefinitely, any rodent, insect, or other animal pest, or that they will do so in an area of a certain size, unless respondents possess competent and reliable scientific evidence that substantiates the representation.

Part III of the proposed order prohibits any representation that PestContro products, or substantially similar products, will alter the electromagnetic field inside the walls or wiring of a home in a manner that drives away insects, rodents, and other animal pests, unless the representation is true and respondents possess competent and reliable scientific evidence that substantiates the representation.

Part IV of the proposed order prohibits any representation that MosquitoContro products, or substantially similar products, will repel mosquitoes from a user's body, or that such products are an effective alternative to the use of chemical pesticides or other products formulated to kill or repel mosquitoes, unless the representation is true and respondents possess competent and reliable scientific evidence that substantiates the representation.

Part V of the proposed order prohibits unsubstantiated representations about the benefits, performance, or efficacy of any product.

Part VI of the proposed order is a record keeping provision that requires the respondents to maintain certain records for five (5) years after the last date of dissemination of any representation covered by the order. These records include: (1) All advertisements and promotional materials containing the representation; (2) all materials relied upon in disseminating the representation; and (3) all evidence in respondents' possession or control that contradicts, qualifies, or calls into question the representation or the basis for it.

Part VII of the proposed order requires distribution of the order to current and future principals, officers, directors, and managers, and to current and future employees, agents, and representatives having responsibilities with respect to the subject matter of the order.

Part VIII of the proposed order requires that the Commission be notified of any change in the corporation that might affect compliance obligations under the order. Part IX of the proposed order requires that for a period of ten (10) years, each individual respondent notify the Commission of the discontinuance of his current business or employment or of his affiliation with any new business or employment involving the sale of consumer products or services.

Part X of the proposed order requires the respondents to file a compliance report with the Commission.

Part XI of the proposed order states that, absent certain circumstance, the order will terminate twenty (20) years from the date it is issued.

The purpose of this analysis is to facilitate public comment on the proposed consent order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify their terms in any way.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 03–3163 Filed 2–7–03; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–03–42]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 498–1210.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Anne O'Connor, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project

Potential Reproductive and Neurological Effects of Exposure to Acrylamide—NEW—The National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC).

The mission of the National Institute for Occupational Safety and Health (NIOSH) is to promote safety and health at work for all people through research and prevention. Consistent with this mission, NIOSH is undertaking a study of the reproductive and neurobehavioral effects of occupational exposure to acrylamide. Acrylamide workers and control workers (n=100 per group) will be recruited from manufacturing, end-user, and non-exposed settings. Exposure will be characterized by acrylamide hemoglobin adduct and urinary metabolite levels, ambient area, personal air, and dermal sampling. Reproductive effects will be evaluated by examining semen quality, sperm DNA integrity, reproductive hormone levels, and prostate specific antigen levels (PSA).

Neurobehavioral effects will be assessed using sensation-tactile, postural stability, grooved pegboard, and simple reaction time tests. Two questionnaires will be administered on one occasion. Questionnaire information will be collected concurrently to augment test interpretation, adjust for potential confounders and covariates during regression analysis, correlate specific jobs and job activities with exposure measurements, and for validation purposes. Findings from this study will clarify if the adverse reproductive effects observed in animal studies are also present in acrylamide-exposed workers, and if preclinical neurobehavioral deficits are present at acrylamide doses currently considered to be within safe limits. This study is scheduled for implementation during 2003 and 2004. There are no costs to respondents.

Survey questionnaires	Number of respondents	Number of responses/ respondent	Average burden/response (in hrs.)	Total burden (in hrs.)
Medical & Reproductive History Questionnaire	200	1	13/60	43
Occupational History Questionnaire	200	1	34/60	113
Non-participant Questionnaire	50	1	2/60	2
Total				158

Dated: February 4, 2003.

Thomas Bartenfeld,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 03–3128 Filed 2–7–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–4051–N]

Medicare Program; Renewal of the Advisory Panel on Medicare Education (APME) and Notice of Meeting of the Advisory Panel—February 27, 2003

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice of renewal and notice of meeting.

SUMMARY: This notice announces the renewal of the Advisory Panel on Medicare Education (APME or the Panel). The Panel advises and makes recommendations to the Secretary of the Department of Health and Human Services and the Administrator of the Centers for Medicare & Medicaid Services on opportunities to enhance the effectiveness of consumer education strategies concerning the Medicare program. This notice announces the signing of the APME charter renewal by the Secretary on January 21, 2003. The charter will terminate on January 21, 2005, unless renewed by the Secretary.

In accordance with the Federal Advisory Committee Act, 5 U.S.C. Appendix 2, section 10(a) (Pub. L. 92–463) this notice also announces a meeting of the Advisory Panel on Medicare Education (the Panel) on

February 27, 2003. This meeting is open to the public.

DATES: The meeting is scheduled for Thursday, February 27, 2003, from 9:15 a.m. to 4 p.m., e.s.t.

Deadline for Submission of Presentations and Comments: February 20, 2003, 12 noon, e.s.t.

ADDRESSES: The meeting will be held at the Wyndham Washington Hotel, 1400 M Street, NW., Washington, DC, 20005, (202) 429–1700.

FOR FURTHER INFORMATION CONTACT: Lynne Johnson, Health Insurance Specialist, Division of Partnership Development, Center for Beneficiary Choices, Centers for Medicare & Medicaid Services, 7500 Security Boulevard, S2–23 05, Baltimore, MD, 21244–1850, (410) 786–0090. Please refer to the CMS Advisory Committees Information Line (1–877–449–5659 toll free)/(410–786–9379 local) or the Internet (*http://www.cms.gov/faca/apme/default.asp*) for additional information and updates on committee activities, or contact Ms. Johnson via E-mail at *ljohnson3@cms.hhs.gov.* Press inquiries are handled through the CMS Press Office at (202) 690–6145.

SUPPLEMENTARY INFORMATION:

I. Background

Section 222 of the Public Health Service Act (42 U.S.C. 217a), as amended, grants to the Secretary the authority to establish an advisory panel if the Secretary finds the panel necessary and in the public interest. The Secretary signed the charter establishing this panel on January 21, 1999 (64 FR 7849), and approved the renewal of the charter on January 18, 2001. The Panel advises and makes recommendations to the Secretary and the Administrator of the Centers for Medicare & Medicaid Services (CMS) on opportunities to enhance the effectiveness of consumer education strategies concerning the Medicare program. The goals of the panel are as follows:

- Develop and implement a national Medicare education program that describes the options for selecting a health plan under Medicare.
- Enhance the Federal government's effectiveness in informing the Medicare consumer, including the appropriate use of public-private partnerships.
- Expand outreach to vulnerable and underserved communities, including racial and ethnic minorities, in the context of a national Medicare education program.
- Assemble an information base of best practices for helping consumers evaluate health plan options and build a community infrastructure for information, counseling, and assistance.

The current members of the panel are: Dr. Jane Delgado, Chief Executive Officer, National Alliance for Hispanic Health; Joyce Dubow, Senior Policy Advisor, Public Policy Institute, AARP; Timothy Fuller, Executive Director, National Gray Panthers; John Graham IV, Chief Executive Officer, American Diabetes Association; Dr. William Haggett, Senior Vice President, Government Programs, Independence Blue Cross; Thomas Hall, Chairman and Chief Executive Officer, Cardio-Kinetics, Inc.; David Knutson, Director, Health System Studies, Park Nicollet Institute for Research and Education; Brian Lindberg, Executive Director, Consumer Coalition for Quality Health Care; Katherine Metzger, Director, Medicare and Medicaid Programs, Fallon Community Health Plan; Dr. Laurie Powers, Co-Director, Center on Self-Determination, Oregon Health Sciences University; Dr. Marlon Priest, Professor of Emergency Medicine, University of Alabama at Birmingham; Dr. Susan Reinhard, Co-Director, Center for State Health Policy, Rutgers University and Chairperson of the Advisory Panel on Medicare Education; Dr. Everard Rutledge, Vice President of Community Health, Bon Secours Health Systems, Inc.; Jay Sackman, Executive Vice President, 1199 Service Employees International Union; Dallas Salisbury, President and Chief Executive Officer, Employee Benefit Research Institute; Rosemarie Sweeney, Vice President, Socioeconomic Affairs and Policy Analysis, American Academy of Family Physicians; and Bruce Taylor, Director, Employee Benefit Policy and Plans, Verizon Communications.

II. Provisions of this Notice

A. Renewal

This notice announces the signing of the Advisory Panel on Medicare Education charter renewal by the Secretary on January 21, 2003. The charter will terminate on January 21, 2005, unless renewed by the Secretary before the expiration date.

B. Meeting Notice

The agenda for the February 27, 2003, meeting will include the following items:

- Recap of the previous (November 19, 2002) meeting.
- Center for Beneficiary Choices update.
- Promoting the use of Medicare preventive benefits.
- Eliminating disparities in the use of Medicare preventive benefits.
- 2003/2004 Medicare Education Campaign.
- Update on Home Health Quality Initiative.
- Public comment.
- Listening session with CMS leadership.
- Next steps.

Individuals or organizations that wish to make a 5-minute oral presentation on an agenda topic should contact Ms. Johnson by 12 noon, February 20, 2003. A written copy of the oral presentation should also be submitted to Ms. Johnson by 12 noon, February 20, 2003. The number of oral presentations may be limited by the time available. Individuals not wishing to make a presentation may submit written comments to Ms. Johnson by 12 noon, February 20, 2003. The meeting is open to the public, but attendance is limited to the space available. Individuals requiring sign language interpretation for the hearing impaired or other special accommodations should contact Ms. Johnson at least 15 days before the meeting.

III. Copies of the Charter

You may obtain a copy of the Secretary's charter for the APME by submitting a request to Lynne Johnson, Health Insurance Specialist, Division of Partnership Development, Center for Beneficiary Choices, Centers for Medicare & Medicaid Services, 7500 Security Boulevard, S2–23–05, Baltimore, MD, 21244–1850, (410) 786–0090 or contact Ms. Johnson via E-mail at *ljohnson3@cms.hhs.gov.* A copy of the charter will also be available on the Internet at (*http://www.cms.gov/faca/apme/default.asp*).

Authority: Sec. 222 of the Public Health Service Act (42 U.S.C. 217(a) and sec. 10(a) of Pub. L. 92–463 (5 U.S.C. App. 2, sec. 10(a) and 41 CFR 102–3).

(Catalog of Federal Domestic Assistance Program No. 93.733, Medicare—Hospital Insurance Program; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program.)

Dated: February 4, 2003.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 03–3073 Filed 2–7–03; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 03N–0016]

Agency Information Collection Activities; Proposed Collection; MedWatch: The FDA Medical Products Reporting Program; Comment Request

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information and to allow 60 days for public comment in response to the notice. This notice solicits comments on the ''MedWatch: The FDA Medical Products Reporting Program'' forms (Form FDA 3500—voluntary version and Form FDA 3500A—mandatory version). These forms are currently used to report to the agency about adverse events, product problems, and medication errors that occur with FDA regulated products, including drugs, biologicals, medical devices, and special nutritional products.

DATES: Submit written or electronic comments on the collection of information by April 11, 2003.

ADDRESSES: Submit electronic comments on the collection of information to *http://www.accessdata.fda.gov/scripts/oc/dockets/edockethome.cfm*. Submit written comments on the collection of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document. Submit written requests for single copies of the revised MedWatch reporting forms, Form FDA 3500 (voluntary) and Form FDA 3500A (mandatory), to MedWatch: The FDA Safety Information and Adverse Event Reporting Program (HFD–410), Food and Drug Administration, 5600 Fishers Lane, rm. 15B–18, Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your request. See the **SUPPLEMENTARY INFORMATION** for electronic access to the MedWatch reporting forms.

FOR FURTHER INFORMATION CONTACT: Karen L. Nelson, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

SUPPLEMENTARY INFORMATION:

I. Background

Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

MedWatch: The FDA Medical Products Reporting Program, Forms FDA 3500 and FDA 3500A (OMB Control Number 0910–0291)—Extension

Under sections 505, 512, 513, 515, and 903 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355, 360b, 360c, 360e, and 393); and section 351 of the Public Health Service Act (42 U.S.C. 262), FDA has the responsibility to ensure the safety and effectiveness of drugs, biologics, and devices. Under section 502(a) of the act (21 U.S.C. 352(a)), a drug or device is misbranded if its labeling is false or misleading. Under section 502(f)(1) of the act it is misbranded if it fails to bear adequate warnings, and under section 502(j), it is misbranded if it is dangerous to health when used as directed in its labeling.

Under section 4 of the Dietary Supplement Health and Education Act of 1994 (the DSHEA) (21 U.S.C. 341), section 402 of the act (21 U.S.C. 342) is amended so that FDA must bear the burden of proof to show a dietary supplement is unsafe.

To carry out its responsibilities, the agency needs to be informed whenever an adverse event, product problem or medication error occurs. Only if FDA is provided with such information, will the agency be able to evaluate the risk, if any, associated with the product, and take whatever action is necessary to reduce or eliminate the public's exposure to the risk through regulatory action ranging from labeling changes to the rare product withdrawal. To ensure the marketing of safe and effective products, certain adverse events must be reported. Requirements regarding mandatory reporting of adverse events or product problems have been codified in parts 310, 314, 600, and 803 (21 CFR 310, 314, 600, and 803), specifically §§ 310.305, 314.80, 314.98, 600.80, 803.30, 803.50, 803.53, and 803.56.

To implement these provisions for reporting of adverse events, product problems and/or medication error with medications, devices, biologics, and special nutritional products, as well as any other products that are regulated by FDA, two very similar forms are used, Form FDA 3500 is used for voluntary (i.e., not mandated by law or regulation) reporting of adverse events, product problems, and medication errors by health professionals and the public. Form FDA 3500A is used for mandatory reporting (i.e., required by law or regulation).

Respondents to this collection of information are health professionals, hospitals and other user-facilities (e.g., nursing homes, etc.), consumers, manufacturers of biological and drug products, medical devices, and importers.

II. Use of the Voluntary Version (FDA Form 3500)

The voluntary version of the form is used to submit all adverse event, product problems, and medication error reports not mandated by Federal law or regulation.

Individual health professionals are not required by law or regulation to submit adverse event, product problem, or medication error reports to the agency or the manufacturer, with the exception of certain adverse reactions following immunization with vaccines as mandated by the National Childhood

Vaccine Injury Act (NCVIA) of 1986. Those mandatory reports are submitted by physicians to the joint FDA/Centers for Disease Control and Prevention (CDC) Vaccines Adverse Event Reporting System (VAERS) on the VAERS–1 form (see *http://www.vaers.org* for pdf version) rather than the FDA 3500 or 3500A forms.

Hospitals are not required by Federal law or regulation to submit adverse event reports, product problems, or medication errors associated with medications, biological products or special nutritional products. However, hospitals and other user facilities are required by Federal law to report medical device related deaths and serious injuries.

Manufacturers of dietary supplements do not have to prove safety or efficacy of their products prior to marketing, nor do they have mandatory requirements for reporting adverse reactions to FDA. However, the DSHEA puts the onus on FDA to prove that a particular product is unsafe. The agency is dependent on the voluntary reporting by health professionals and consumers of suspected adverse events associated with the use of dietary supplements.

III. Use of the Mandatory Version (FDA Form 3500A)

A. Drug and Biologic Products

In sections 505(j) and 704 (21 U.S.C. 374) of the act, Congress has required that important safety information relating to all human prescription drug products be made available to FDA so that it can take appropriate action to protect the public health when necessary. Section 702 of the act (21 U.S.C. 372) authorizes investigational powers to FDA for enforcement of the act. These statutory requirements regarding mandatory reporting have been codified by FDA under parts 310 and 314 (drugs) and 600 (biologics). Parts 310, 314, and 600 mandate the use of the FDA Form 3500A form for reporting to FDA on adverse events that occur with drug and biologics.

[Note: Most pharmaceutical manufacturers already use a one-page modified version of the 3500A form where Section G from the back of the form is substituted for Section D on the front of the form.]

B. Medical Device Products

Section 519 of the act (21 U.S.C. 360i) requires manufacturers and importers of devices intended for human use to establish and maintain records, make reports, and provide information as the Secretary of Health and Human Services may by regulation reasonably require to assure that such devices are not adulterated or misbranded and to otherwise assure its safety and effectiveness. Furthermore, the Safe Medical Devices Act of 1990 (SMDA), signed into law on November 28, 1990, amends section 519 of the act. The amendment requires that user facilities such as hospitals, nursing homes, ambulatory surgical facilities and outpatient treatment facilities report deaths related to medical devices to FDA and to the manufacturer, if known. Serious illnesses and injuries are to be reported to the manufacturer or to FDA if the manufacturer is not known. These statutory requirements regarding mandatory reporting have been codified by FDA under part 803. Part 803 mandates the use of the FDA Form 3500A for reporting to FDA on medical devices.

C. Other Products Used in Medical Therapy

There are no mandatory requirements for the reporting of adverse events or product problems with products such as dietary supplements.

FDA estimates the burden for completing the forms for this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

FDA Center (21 CFR Section)	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
Center for Biologics Evaluation and Research/					
Center for Drug Evaluation and Research					
Form 3500	20,074	1	20,074	0.5	10,037
Form 3500A (§§ 310.305, 314.80, 314.98, 600.80)	600	463.86	278,315	1.0	278,315
Center for Devices and Radiological Health					
Form 3500	3,252	1	3,252	0.5	1,626
Form 3500A (§ 803)	1,935	33	63,623	1.0	63,623
Center for Food Safety and Applied Nutrition					
Form 3500	895	1	895	0.5	448
Form 3500A (no mandatory requirements)	0	0	0	1.0	0
Total Hours					354,049
Form 3500					12,111
Form 3500A					341,938

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

NOTE: FDA Form 3500 is for voluntary reporting; FDA Form 3500A is for mandatory reporting.

The figures shown in Table 1 of this document are based on actual fiscal year 2002 reports and respondents for each Center and type of report.

IV. Electronic Access

Persons with access to the Internet may obtain the MedWatch reporting forms, Form FDA 3500 (voluntary) and Form FDA 3500A (mandatory) at *http://www.fda.gov/medwatch/getforms.htm* or by calling 1–800–FDA–1088 and leaving your name and mailing address. Copies of the MedWatch reporting forms, Form FDA 3500 (voluntary) and Form FDA 3500A (mandatory) are available for public examination at *http://www.fda.gov/ohrms/dockets/dockets/dockets.htm* or in the Dockets

Management Branch (see **ADDRESSES**) between 9 a.m. and 4 p.m., Monday through Friday.

Dated: February 4, 2003.

Margaret M. Dotzel,

Assistant Commissioner for Policy.

[FR Doc. 03–3174 Filed 2–7–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4821–N–01]

Notice of Proposed Information Collection: Comment Request; Investor and Issuer Benchmark Surveys

AGENCY: Office of the President of Government National Mortgage Association (Ginnie Mae), HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* April 11, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Sonya Suarez, Office of Program Operations, Department of Housing and Urban Development, 451–7th Street, SW., Room 6206, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Sonya Suarez, Ginnie Mae, (202) 708–2884 (this is not a toll-free number) for copies of the proposed forms and other available documents.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

The Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Investor and Issuer Benchmark Surveys.

OMB *Control Number, if applicable:* N/A.

Description of the need for the information and proposed use: Ginnie Mae is currently engaged in assessing how the agency and its products are seen by current and potential issuers of and investors in secondary market securities. This proposed survey research on how Ginnie Mae and its products are perceived compared to competing entities and products in the secondary mortgage market will help Ginnie Mae improve its product offerings, services, communications and outreach to current and prospective issuers and investors in Ginnie Mae securities.

Members of affected public: For-profit business (secondary market mortgage companies and institutional investors).

Estimation of the total number of hours needed to prepare the information collection, including number of respondents, frequency of response, and hours of response: Estimates of the hour burden of collecting information for the forms are as follows:

Number of respondents	Frequency of responses	×	Total of responses	×	Hours. per response	=	Total hours
1,000	1		1,000		.25		250

Status of the proposed information collection: This is a new collection.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: January 17, 2003.

George S. Anderson,

Executive Vice President, Ginnie Mae.

[FR Doc. 03–3126 Filed 2–7–03; 8:45 am]

BILLING CODE 4210–66–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4815–N–03]

Notice of Submission of Proposed Information Collection to OMB: HOPE VI—In Depth Assessment of Family and Neighborhood Outcomes—Wave Two and Three of Panel Study

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments Due Date: March 12, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2577–0236) and should be sent to: Lauren Wittenberg, OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; Fax number (202) 395–6974; E-mail *Lauren_Wittenberg@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov;* telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5)

the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of Proposal: HOPE VI—In Depth Assessment of Family and Neighborhood Outcomes—Wave Two and Three of Panel Study.

OMB Approval Number: 2577–0236.

Form Numbers: None.

Description of the Need for the Information and its Proposed Use: Wave Two and Three of Panel Study to learn how housing choices and outcomes for original residents are affected by revitalization efforts at selected HOPE VI sites.

Respondents: Individuals or households, State, Local or Tribal Government.

Frequency of Submission: Twice.

Reporting Burden: Number of Respondents 887; Annual Responses 0.8 × Hours per response 1 = Burden hours 710.

Total Estimated Burden Hours: 710.

Status: Reinstatement, with change.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: February 4, 2003.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 03–3230 Filed 2–7–03; 8:45 am]

BILLING CODE 4210–72–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4491–N–09]

Notice of Intent To Prepare Draft Environmental Impact Statement for Park Lake Homes, King County, WA

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice of intent.

SUMMARY: HUD gives notice to the public that King County Housing Authority (KCHA) acting under its State Environmental Policy Act (SEPA) authority, and the King County Department of Development and Environmental Services (DDES), as the Responsible Entity in accordance with 24 CFR 58.2, intends to prepare an Environmental Impact Statement (EIS) for redevelopment of the Park Lake Homes public housing community. This notice is in accordance with regulations of the Council on Environmental Quality. Federal agencies having jurisdiction by law, special expertise, or other special interest should report their interests and indicate their readiness to aid in the EIS effort as a ''Cooperating Agency.''

A Draft EIS will be prepared for the proposed action described herein. Comments relating to the Draft EIS are requested and will be accepted by the contact person listed below. When the Draft EIS is completed, a notice will be sent to individuals and groups known to have an interest in the Draft EIS and particularly in the environmental impact issues identified therein. Any person or agency interested in receiving a notice and making comment on the Draft EIS should contact the person listed below within 30-days after publication of this notice.

Lead Agencies: This EIS will be a joint NEPA and Washington SEPA document intended to satisfy requirements of federal and state environmental statutes. In accordance with specific statutory authority and HUD's regulations at 24 CFR part 58 (Environmental Review Procedures for Entities Assuming HUD Environmental Responsibilities), HUD has allowed NEPA authority and NEPA lead agency responsibility to be assumed by the King County DDES in cooperation with the KCHA, as the SEPA lead agency.

ADDRESSES: All interested agencies, groups, and persons are invited to submit written comments on the project named in this notice, and the Draft EIS to the contact person shown below. The office of the contact person should receive comments and all comments so received will be considered prior to the preparation and distribution of the Draft EIS. Particularly solicited is information on reports or other environmental studies planned or completed in the project area, major issues and dates that the EIS should consider, and recommended mitigation measures and alternatives associated with the proposed project. Federal agencies having jurisdiction by law, special expertise or other special interest should report their interest and indicate their readiness to aid in the EIS effort as a ''Cooperating Agency.''

FOR FURTHER INFORMATION CONTACT: Greg Borba, Planning Supervisor, King County Department of Development and Environmental Services, 900 Oaksdale Avenue SW., Renton, WA 98055–1219; Phone: (206) 296–7118; FAX: (206) 296–7051; e-mail: *greg.borba@metrokc.gov.*

A. Background

KCHA, acting under its SEPA authority, and the King County DDES, acting under authority of section 104(g) of the Housing and Community Development Act of 1974 (42 U.S.C. 5304(g)) and HUD's regulations at 24 CFR part 58, in cooperation with other interested agencies, will prepare an EIS to analyze potential impacts of redevelopment of the Park Lake Homes public housing community. This EIS will be a joint NEPA and Washington SEPA document intended to satisfy requirements of federal and state environmental statutes.

Park Lake Homes is KCHA's oldest and largest public housing development. Built in 1942 to serve as temporary housing for World War II defense workers, structures have been renovated several times. The KCHA received a HOPE VI grant award from HUD in November 2001, to initiate planning for the revitalization of this public housing development.

The proposed project would involve redevelopment of the existing approximately 95-acre Park Lake Homes public housing community located in the White Center area of unincorporated King County, Washington. The proposed redevelopment is consistent with requirements for a mixed-use, mixed-income housing project as described in the HOPE VI grant. The project site currently contains 569 residential units, a community center, a maintenance shop, a Head Start School, and a secondary building containing a food bank and administrative offices. The residential units are in primarily single story duplex structures.

Many or all of the current buildings on the site are to be demolished in phases, unless renovation for community services use is feasible. The existing Jim Wiley Community Center Building will likely be renovated. In addition, much of the existing infrastructure would be demolished, abandoned, or replaced, also in phases. The site would be redeveloped to provide approximately 900 dwelling units including an estimated 500 units of rental housing and 400 units of for-sale housing. It is anticipated that the rental housing would include approximately 300 units of housing to serve households of very low income and approximately 200 units of workforce housing (50%–60% of the area median income). Approximately 34,000 square feet of additional community space would also be developed to provide a range of community uses (*i.e.*, social services, educational facilities, library, neighborhood services, commercial uses).

All existing low-income housing is planned to be replaced either on-site or elsewhere in King County through construction of public housing units on-site and project based Section 8 vouchers in existing or new housing complexes. Existing residents would be displaced and assisted with benefits according to the provisions of the Uniform Relocation Act (42 U.S.C. 4601 *et seq.*). Where possible, displaced residents in good standing would be allowed to return to the public housing units once redevelopment is completed.

B. Need for the EIS

The proposed project may constitute an action significantly affecting the quality of the human environment and an EIS will be prepared on this project by KCHA and the King County DDES in accordance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Responses to this notice will be used to, (1) determine significant environmental issues, (2) identify data that the EIS should address, and (3) identify agencies and other parties that will participate in the EIS process and the basis for their involvement.

C. Scoping

A public EIS scoping meeting will be held on February 26, 2003, at 6 p.m. The EIS scoping meeting will provide an opportunity for the public to learn more about the project and provide input to the environmental process. At the meeting, the public will be able to view graphics illustrating preliminary planning work and talk with King County DDES and KCHA staff, and members of the consultant team providing technical analysis to the project. Translators will be available. Written comments and testimony concerning the scope of the EIS will be accepted at this meeting.

The scoping meeting will be held at the Park Lake Homes Jim Wiley Community Center, which is located at 9800 8th Ave. SW., Seattle, WA 98106.

D. EIS Issues

The lead agencies have preliminarily identified the following environmental elements for discussion in the EIS: earth (geology, soils, topography); air quality; water (surface water movement/quantity, runoff/absorption, flooding, groundwater movement/quantity/quality); plants and animals; energy use; noise; land use and socioeconomic factors (land use patterns, relationship to plans/policies and regulations; population; housing and displacements); environmental justice (disproportionately high and adverse effects on minority and low income populations); historic and cultural resources; aesthetics, light and glare; parks and recreation; public services and utilities (fire, police, parks/recreation, communications, water, stormwater, sewer, solid waste); and transportation (transportation systems, parking, movement/circulation, traffic hazards).

Questions may be directed to the individual named in this notice under the heading **FOR FURTHER INFORMATION CONTACT.**

Dated: February 4, 2003.

Nelson R. Bregon,

Acting General Deputy Assistant Secretary for Community Planning and Development.

[FR Doc. 03–3229 Filed 2–7–03; 8:45 am]

BILLING CODE 4210–29–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of a Draft Habitat Conservation Plan and Receipt of an Application for an Incidental Take Permit for the City and County of Denver's Board of Water Commissioners, Denver, CO

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability and receipt of application.

SUMMARY: This notice advises the public that the City and County of Denver, acting by and through its Board of Water Commissioners (Denver Water) has applied to the Fish and Wildlife Service (Service) for an Incidental Take Permit (ITP) pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (Act). The permit would authorize the loss and modification of habitat associated with Denver Water's Operations and Maintenance (O&M) activities and the incidental take of Preble's meadow jumping mouse (*Zapus hudsonius preblei*) (''Preble's''), federally listed as threatened. The permit would be in effect for 30 years from the date of issuance.

The Service received Denver Water's ITP Application that includes a proposed Habitat Conservation Plan (HCP) and Environmental Assessment (EA) for the Preble's on Denver Water properties. The proposed HCP/EA is available for public comments. It fully describes the proposed O&M activities and the measures Denver Water would undertake to avoid, minimize, and mitigate project impacts to the Preble's.

The Service requests comments on the HCP/EA for the proposed issuance of an ITP. Pursuant to notice requirements under section 10(c) of the Act and the National Environmental Policy Act regulations (40 CFR 1406.6), all comments on the HCP/EA and permit application will become part of the administrative record and will be available to the public.

DATES: Written comments on the permit application and the HCP/EA should be received on or before April 11, 2003.

ADDRESSES: Comments regarding the permit application and the HCP/EA should be addressed to LeRoy Carlson, Field Supervisor, U.S. Fish and Wildlife Service, Colorado Field Office, 755 Parfet Street, Suite 361, Lakewood, Colorado 80215.

FOR FURTHER INFORMATION CONTACT: Kathleen Linder, Fish and Wildlife Biologist, Colorado Field Office, telephone (303) 275–2370.

SUPPLEMENTARY INFORMATION:

Document Availability

Individuals wishing copies of the HCP/EA and associated documents for review should immediately contact the above office. Documents also will be available for public inspection by appointment, during normal business hours, at the Lakewood, Colorado, Field Office (See **ADDRESSES** above).

Background

Section 9 of the Act and Federal Regulation prohibits the ''take'' of a species listed as endangered or threatened. Take is defined under the Act, in part, as to kill, harm, or harass a federally listed species. However, the Service may issue permits to authorize ''incidental take'' of listed species under limited circumstances. Regulations governing permits for threatened species are promulgated in 50 CFR 17.32.

The applicant's plan to conduct O&M activities necessary for Denver Water to meet its mission of providing a safe and high quality water supply to its customers covers properties that may constitute Preble's habitat in Boulder, Jefferson, and Douglas Counties in Colorado. Such activities would include repair and maintenance of infrastructures and facilities (*e.g.*, conduits, siphons), ditch/canal maintenance, road repair and maintenance, construction of new conduits, burial of pipeline, and other activities necessary for municipal water supply. The planning area for the permit application covers approximately 2,428 hectares (6,000 acres) of properties that may constitute Preble's habitat. The O&M activities could permanently alter no more than 4 hectares (10 acres) of potential Preble's habitat, but are estimated to only permanently impact 0.4 hectare (1 acre). Additionally, up to 30 hectares (74 acres) of potential Preble's habitat could be temporarily impacted, with total impacts not to exceed 30 hectares (75 acres) (either 0.4 hectare (1 acre) permanent and 30 hectares (74 acres) temporary or ranging up to no more than 4 hectares (10 acres) permanent and 26 hectares (65 acres) of temporary disturbance). As discussed below, Denver Water proposes a number of measures to mitigate possible impacts of the proposed action.

Alternatives considered were—No Action; individual ITPs on a site-by-site/project-by-project basis, as needed; waiting for approval of and participating in three separate countywide HCPs; waiting for and participating in a single Statewide HCP; and the Preferred Alternative—a single incidental take permit held by Denver Water, achieved through the proposed HCP. None of these alternatives, except No Action, eliminated potential take of Preble's.

To mitigate impacts that may result from incidental take the HCP provides mitigation that includes—restoration of temporary disturbance to a specified level of success, creation of riparian shrub and upland habitat, revegetation of social trails no longer in use, weed management, education to Denver Water employees conducting O&M activities, maintenance and management of a potential Preble's habitat linkage corridor, population monitoring, and conducting Preble's trapping to assess status. All efforts will be made to avoid and minimize disturbances to Preble's habitat according to Best Management Practices specified in the HCP.

Denver Water is committed to providing the necessary funding to support the implementation of the HCP/EA. Denver Water will allocate necessary funds into its budget under an account that is established specifically for the HCPs mitigation, monitoring, and compliance requirements.

This notice is provided pursuant to section 10(c) of the Act. The Service will evaluate the permit application, the EA/HCP, and comments submitted therein to determine whether the application meets the requirements of section 10(a)(1)(B) of the Act. If it is determined that those requirements are met, a permit will be issued for the incidental take of the Preble's in conjunction with Denver Water's activities on properties that may constitute Preble's habitat. The final permit decision will be made no sooner than 60 days from the date of this notice.

Dated: January 29, 2003.

John A. Blankenship,

Deputy Regional Director.

[FR Doc. 03–3133 Filed 2–7–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–310–1310–PB–24 1A]

Extension of Approved Information Collection, OMB Control Number 1004–0196

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Bureau of Land Management (BLM) is requesting the Office of Management and Budget (OMB) to extend an existing approval to collect certain information from operators and operating rights owners who apply for designation of National Petroleum Reserve-Alaska (NPRA) unit agreements. We collect nonform information to determine whether to grant approval to operate under a unit plan for NPRA Federal lands. We require operators to retain and provide data to determine whether proposed unit agreements meet the requirements for unitized exploration and development of oil and gas resources of the NPRA.

DATES: You must submit your comments to BLM at the address below on or before April 11, 2003. BLM will not necessarily consider any comments received after the above date.

ADDRESSES: You may mail comments to: Bureau of Land Management, (WO–630), Eastern States Office, 7450 Boston Blvd., Springfield, Virginia 22153.

You may send comments via Internet to: *WOComment@blm.gov.* Please include ''ATTN: 1004–0196'' and your name and return address in your Internet message.

You may deliver comments to the Bureau of Land Management, Administrative Record, Room 401, 1620 L Street, NW., Washington, DC.

All comments will be available for public review at the L Street address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: You may contact Barbara Gamble, Fluid Minerals Group, on (202) 452–0338 (Commercial or FTS). Persons who use a telecommunication device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) on 1–800–877–8330, 24 hours a day, seven days a week, to contact Ms. Gamble.

SUPPLEMENTARY INFORMATION: 5 CFR 1320.12(a) requires that BLM provide a 60-day notice in the **Federal Register** concerning a collection of information to solicit comments on:

(a) Whether the collection of information is necessary for the proper functioning of the agency, including whether the information will have practical utility;

(b) The accuracy of our estimates of the information collection burden, including the validity of the methodology and assumptions we use;

(c) Ways to enhance the quality, utility, and clarity of the information collected; and

(d) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

The Naval Petroleum Reserves Production Act of 1976, as amended (42 U.S.C. 6501 et seq.), the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.), and the National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 et seq.), and 43 CFR 3133, 3135, 3137, and 3138 require affected oil and gas operators and operating rights owners to maintain records or provide information to apply for suspensions of royalty; apply for suspensions of operations; form and maintain unit agreements; and to enter into subsurface storage agreements, respectively. All recordkeeping burdens are associated with the nonform items requested.

The reporting burden of each provision for the information collection, including recordkeeping, depends on which information is required. The respondents are oil and gas operators and operating rights owners. The frequency of response varies from one-time only to occasionally to routine, depending on activities conducted. We estimate 35 responses per year and a total annual burden of 410 hours. We based this estimate on our experience managing the program. The table below summarizes our estimates.

Information collection (43 CFR)	Requirement	Hours per response	Respondents	Burden hours
3133.4	Royalty reduction	16	1	16
3135.3	Suspension of operations	4	1	4
3135.6	Notification of operations	.25	1	.25
3137.23	Unit designation	80	3	240
3137.25	Notification of unit approval	1	3	3
3137.52	Certification for modification	4	1	4
3137.60	Acceptable Bonding	.5	3	1.5
3137.61	Change of unit operator	.75	2	1.5
3137.70	Certification of unit obligation	2	3	6
3137.71	Certification of continuing development	2	3	6
3137.84	Productivity for a PA	12	2	24
3137.87	Unleased tracts	3	1	3
3137.88	Notification of productivity	.5	1	.5
3137.91	Notification of productivity for non-unit well	.5	1	.5
3137.92	Production information	1	1	1
3137.112	Lease extension	3	1	3
3137.113	Inability to conduct operations activities	2	1	2
3137.130	Unit termination	1	2	2
3137.135	Impact mitigation	4	3	12
3138.11	Storage agreement	80	1	80
Total			35	410

BLM will summarize all responses to this notice and include them in the request for OMB approval. All comments will become a matter of public record.

Dated: February 4, 2003.

Michael H. Schwartz,

Bureau of Land Management, Information Collection Clearance Officer.

[FR Doc. 03–3258 Filed 2–7–03; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–310–1310–PB–24 1A]

Extension of Approved Information Collection, OMB Control Number 1004–0132

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Bureau of Land Management (BLM) is requesting the Office of Management and Budget (OMB) to extend an existing approval to collect certain information from entities interested in the development of geothermal steam resources on lands BLM manages. BLM uses Form 3260–2, Geothermal Drilling Permit; Form 3260–3, Geothermal Sundry Notice; Form 3260–4, Geothermal Well Completion Report; Form 3260–5, Monthly Report of Geothermal Operations; to collect this information. This information allows BLM to approve proposed operations and to ensure compliance with terms and conditions of approved operations.

DATES: You must submit comments to BLM at the address below on or before April 11, 2003. BLM will not necessarily consider any comments received after the above date.

ADDRESSES: You may mail comments to: Bureau of Land Management, (WO–630), Eastern States Office, 7450 Boston Blvd., Springfield, Virginia 22153.

You may send comments via Internet to: *WOComment@blm.gov.* Please include ''ATTN: 1004–0132'' and your name and return address in your Internet message.

You may deliver comments to the Bureau of Land Management, Administrative Record, Room 401, 1620 L Street, NW., Washington, DC.

All comments will be available for public review at the L Street address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: You may contact Barbara Gamble, Fluids Minerals Group, (202) 452–0338 (Commercial or FTS). Persons who use a telecommunication device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) on 1–800–877–8330, 24 hours a day, seven days a week, to contact Ms. Gamble.

SUPPLEMENTARY INFORMATION: 5 CFR 1320.12(a) requires BLM to provide a 60-day notice in the **Federal Register** concerning a collection of information to solicit comments on:

(a) Whether the proposed collection of information is necessary for the proper functioning of the agency, including whether the information will have practical utility;

(b) The accuracy of our estimates of the information collection burden, including the validity of the methodology and assumptions we use;

(c) Ways to enhance the quality, utility, and clarity of the information collected; and

(d) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

The Geothermal Steam Act of 1970 (30 U.S.C. 1001 et seq.) authorizes the Secretary of the Interior to issue leases and prescribe regulations so that geothermal resources on certain Federal lands may be developed and used. Tribal lands under the Indian Mineral Development Act (25 U.S.C. 2101–2108) also allow geothermal leasing operations. The BLM supervises operations of the leases granted under this authority by the regulations in 43 CFR part 3260. The regulations contain information collection requirements that we need to grant the lessees permits to perform specific operations and to report the completion and progress of such work. Specifically, the regulations require operators to submit a Geothermal Drilling Permit (Form 3260–2); a Geothermal Sundry Notice (Form 3260–3); a Geothermal Well Completion Report (Form 3260–4); and a Monthly Report of Geothermal Operations (Form 3260–5).

The information the lessee of record, a designated operator, or an approved agent acting on behalf of the lessee or operator provides, allows BLM to conduct or modify operations under the terms and conditions of a Federal geothermal lease or an Indian geothermal contract. The information enables BLM to approve both geothermal explorations and modifications to existing wells.

Form 3260–2, Geothermal Drilling Permit

This is a permit to drill, redrill, deepen or plug back a well on Federal lands. It provides a basis for evaluating the proposed well's feasibility and to determine whether we should disapprove or approve the application; and, if we approve, whether any special conditions of approval are made part of the permit. Without the information, there would be no assurance that drilling and associated activities, when and if authorized, are technically and environmentally feasible and ensure proper conservation of the resources.

Form 3260–3, Geothermal Sundry Notice

We require the sundry notice for planned well work or change of plans previously approved, road site and facilities construction and miscellaneous activities related to other previously approved operations. The lessee must also file a subsequent report of the work performed. Without this information, BLM cannot adequately evaluate the feasibility and environmental impacts of the proposed activity.

Form 3260–4, Geothermal Well Completion Report

We use the well completion report to obtain information on a complete and accurate log and history, in chronological order, of all operations conducted on the well. The logs are kept by lessees as normal, routine procedures and are not imposed as an additional requirement by BLM. We use this information to facilitate future operations, protect water supplies and Federal geothermal resources, and to allow accurate appraisal of down-hole conditions related to proper management of the resource.

Form 3260–5, Monthly Report of Geothermal Operations

We use the form to obtain information for monthly production for royalty reporting and production verification from geothermal wells. BLM uses the report to monitor the technical aspects of drilling, production, and injection activities for each well. We require the information on a monthly basis because of a direct link to royalty payments due from the lessee on a monthly basis and the associated production verifications. Without this information, BLM could not adequately evaluate activity and performance of non-abandoned wells and production facilities for individual leases. This includes drilling and other well operations and engineering data for individual well production and injection. The lessee also reports any environmental monitoring conducted.

Based on our experience administering the activities described above, we estimate it takes from 1 to 10 hours per response to complete the required information, depending on which form the respondent submits. Respondents are lessees and operators of Federal geothermal leases and Indian geothermal contracts subject to BLM oversight. We estimate 760 responses per year and a total annual burden of 1,700 hours. The estimates are summarized in the table below.

Information collection (43 CFR)	Form number/title	Responses	Hours per response	Burden hours	Frequency
3264.2	3260–2; Geothermal Drilling Permit	60	10	600	Nonrecurring.
3264.2–2	3260–3; Geothermal Sundry Notice	100	1	100	On occasion.
3262.5–1;	3260–4; Geothermal Well Completion Report	200	2	400	On occasion.
3264.2–3		40	6	240	
3264.2–4; 3265.2–5	3260–5; Monthly Report of Geothermal Operations.	360	1	360	Monthly.
Totals		760		1,700	

BLM will summarize all responses to this notice and include them in the request for OMB approval. All comments will become a matter of public record.

Dated: February 4, 2003.

Michael H. Schwartz,

Bureau of Land Management, Information Collection Clearance Officer.

[FR Doc. 03–3259 Filed 2–7–03; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–310–1310–PB–24 1A]

Extension of Approved Information Collection, OMB Control Number 1004–0134

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Bureau of Land Management (BLM), is requesting the Office of Management and Budget (OMB) to extend an existing approval to collect certain information from operators and operating rights owners of Federal and Indian (except Osage) oil and gas leases. We collect nonform information to determine whether BLM may approve proposed operations and to enable us to monitor compliance with terms and conditions of approved operations. Approvals include drilling plans, prevention of waste, protection of resources, development of a lease, measurements, production verification, and protection of public health and safety.

DATES: You must submit your comments to BLM at the address below on or before April 11, 2003. BLM will not necessarily consider any comments received after the above date.

ADDRESSES: You may mail comments to: Bureau of Land Management, (WO–630), Eastern States Office, 7450 Boston Blvd., Springfield, Virginia 22153.

You may send comments via Internet to: *WOComment@blm.gov.* Please include ''ATTN: 1004–0134'' and your name and return address in your Internet message.

You may deliver comments to the Bureau of Land Management, Administrative Record, Room 401, 1601 L Street, NW., Washington, DC.

All comments will be available for public review at the L Street address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: You may contact Barbara Gamble, Fluid Minerals Group, on (202) 452–0338 (Commercial or FTS). Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) on 1–800–877–8330, 24 hours a day, seven days a week, to contact Ms. Gamble.

SUPPLEMENTARY INFORMATION: 5 CFR 1320.12(a) requires that we provide a 60-day notice in the **Federal Register** concerning a collection of information to solicit comments on:

(a) Whether the collection of information is necessary for the proper functioning of the agency, including whether the information will have practical utility;

(b) The accuracy of our estimates of the information collection burden, including the validity of the methodology and assumptions we use;

(c) Ways to enhance the quality, utility, and clarity of the information collected; and

(d) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

The Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701 *et seq.*); the Mineral Leasing Act of 1920, as amended (30 U.S.C. 181 *et seq.*); the Mineral Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351–359); the various Indian leasing acts; and the National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), and BLM's implementing regulations at 43 CFR part 3160 require affected Federal and Indian (except Osage) oil and gas operators and operating rights owners to maintain records and submit nonform information.

The recordkeeping and nonform information items required under various provisions of 43 CFR part 3160 pertain to data the operator or operating rights owner must submit. We will use the information the operator or operating rights owner provides to approve proposed operations and to enable us to monitor compliance with terms and conditions of approved operations. The specific requirements are listed by regulation section.

The information we require under 43 CFR part 3160 covers a broad range of possible operations, and rarely will any specific operator have to obtain or provide each item. Many of the requirements are one-time filings used to gain approval to conduct a variety of oil and gas operations. Others are routine data the operating rights owners or operators submit that we use to monitor production and ensure compliance with lease terms, regulations, Orders, Notices to Lesses, and conditions of approval. We use production information from each producing lease to verify volumes and disposition of oil and gas produced on Federal and Indian lands. All recordkeeping burdens are associated with the nonform items requested.

Based on our experience managing the activities described above, we estimate the public reporting burden of each provision for the information collection, including recordkeeping, ranges from 10 minutes to 16 hours per response, depending on which information is required. The respondents are operators and operating rights owners of Federal and Indian (except Osage) oil and gas leases. The frequency of response varies from one-time only to occasionally to routine, depending on activities conducted on oil and gas leases and on operational circumstances. We estimate 193,855 responses per year and a total annual burden of 96,885 hours. The table below summarizes our estimates.

Information collection (43 CFR)	Requirement	Hours per response	Respondents	Burden hours
3162.3–1(a)	Well-Spacing Program	.5	150	75
3162.3–1(e)	Drilling Plans	8	2,875	23,000
3162.6	Well Markers	.5	300	150
3162.5–2(b)	Direction Drilling	1	[1] 165	165
3162.4–2(a)	Drilling Tests, Logs, Surveys	1	[2] 330	330
3162.3–4(a)	Plug and Abandon for Water Injection	1.5	1,200	1,800
3162.3–4(b)	Plug and Abandon for Water Source	1.5	1,200	1,800
3162.7–1(d)	Additional Gas Flaring	1	400	400
3162.5–1(c)	Report of Spills, Discharges, or Other Undesirable Events.	2	200	400
3162.5–1(b)	Disposal of Produced Water	2	1,500	3,000
3162.5–1(d)	Contingency Plan	16	50	800
3162.4–1(a) and 3162.7–5(d)(1)	Schematic/Facility Diagrams	4	2,350	9,400
3162.7–1(b)	Approval and Reporting of Oil in Pits	.5	520	260
3164.1 (Order No. 3)	Prepare Run Tickets	.2	90,000	18,000
3162.7–5(b)	Records on Seals	.2	90,000	18,000
3165.1(a)	Application for Suspension	8	100	800
3165.3(b)	State Director Review	16	100	1,600
3162.7–5(c)	Site Security	7	2,415	16,905
Totals	....	....	193,855	96,885

[1] Or 5% of wells.
[2] Or 10% of wells.

The respondents already maintain the types of information collected for their own recordkeeping purposes and need only submit the required information. This approval includes all information collections under 43 CFR part 3160 that do not require a form.

BLM will summarize all responses to this notice and include them in the request for OMB approval. All comments will become a matter of public record.

Dated: February 3, 2003.

Michael H. Schwartz,

Bureau of Land Management, Information Collection Clearance Officer.

[FR Doc. 03–3260 Filed 2–7–03; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–310–1310–PB–24 1A]

Extension of Approved Information Collection, OMB Control Number 1004–0160

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Bureau of Land Management (BLM) is requesting the Office of Management and Budget (OMB) to extend an existing approval to collect certain information from geothermal lessees to determine if the lessee qualifies for least extensions. We collect nonform information under 43 CFR Part 3208 to determine if a lessee is making diligent and bona fide efforts to utilize and produce geothermal resources.

DATES: You must submit your comments to BLM at the address below on or before April 11, 2003. BLM will not necessarily consider any comments received after the above date.

ADDRESSES: You may mail comments to: Bureau of Land Management, (WO–630), Eastern States Office, 7450 Boston Blvd., Springfield, Virginia 22153.

You may send comments via Internet to: *WOComment@blm.gov.* Please include ''ATTN: 1004–0160'' and your name and return address in your Internet message.

You may deliver comments to the Bureau of Land Management, Administrative Record, Room 401, 1620 L Street, NW., Washington, DC.

All comments will be available for public review at the L Street address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: You may contact Barbara Gamble on (202) 452–0338 (Commercial or FTS). Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service at 1–800–877–8330, 24 hours a day, seven days a week, to contact Ms. Gamble.

SUPPLEMENTARY INFORMATION: 5 CFR 1320.12(a) requires that we provide a 60-day notice in the **Federal Register** concerning a collection of information to solicit comments on:

(a) Whether the collection of information is necessary for the proper functioning of the agency, including whether the information will have practical utility;

(b) The accuracy of our estimates of the information collection burden, including the validity of the methodology and assumptions we use;

(c) Ways to enhance the quality, utility, and clarity of the information collected; and

(d) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

The Geothermal Steam Act of 1970 (30 U.S.C. 1001–1025) as amended, authorizes the Secretary of the Interior to issue leases for geothermal development. The legislation allows for lease extensions when the Secretary of the Interior determines a lessee made a substantial investment to develop the geothermal resources. It also allows leases to continue beyond the primary terms if there are wells capable of producing geothermal resources. The regulations 43 CFR 3208 specifically address extended lease terms. Lessees may request a lease extension beyond the primary term by: drilling, diligent efforts, production of byproducts, and unit commitment. We use the nonform information to determine if a lessee qualifies to extend its geothermal lease. The lessee submits the following nonform reports, as needed, to support a lease extension:

(1) Diligent Efforts Report—This report includes a description of negotiations for sales contracts, marketing agreements, and planned or conducted operations to define geothermal resources;

(2) Bona Fide Efforts Report—This report includes:

(a) Operations conducted during the primary term of the lease and currently in progress to identify and define the geothermal resource, including a summary of results on those operations;

(b) Actions completed in support of operations, including obtaining permits, environmental studies, or meeting permit requirements, or other related activities;

(c) Actions completed during the primary term of the lease and currently in progress to negotiate marketing agreements, sales contracts, drilling agreements, financial arrangements, electric transmission or wheeling arrangements, or other related actions; and

(d) Current economic factors and conditions that affect the lessee's efforts to produce or utilize geothermal steam in commercial quantities.

(3) Significant Expenditures Report—This report includes:

(a) Expenditures to conduct actual drilling operations on the lease;

(b) Expenditures for road or generating facilities construction on the lease;

(c) Architectural or engineering services procured for the design of generating facilities located on the lease; and

(d) Environmental studies required by State or Federal law. BLM does not require the lessee to submit this report if they choose to make payments in lieu of commercial quantities production.

Based on our experience administering the activities described above, we estimate the public reporting burden for each report is two hours per response. The respondents include individuals, small business, and large corporation. We estimate 75 responses per year and a total annual burden of 150.

BLM will summarize all responses to this notice and include them in the request for OMB approval. All comments will become a matter of public record.

Dated: February 5, 2003.

Michael H. Schwartz,

Bureau of Land Management, Information Collection Clearance Officer.

[FR Doc. 03–3261 Filed 2–7–03; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–160–03–1220–DU–241E]

Notice of Intent To prepare a Recreation Area Management Plan and an Amendment to the Gunnison Resource Management Plan for the Hartman Rocks Recreation Area

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to prepare a Recreation Area Management Plan (RAMP) and an amendment to the Gunnison Resource Management Plan (RMP) for the Hartman Rocks Recreation Area in Gunnison County, Colorado.

SUMMARY: The Bureau of Land Management (BLM) intends to prepare a RAMP with an associated Environmental Assessment (EA) for the Hartman Rocks area near Gunnison, Colorado. The planning area encompasses approximately 10,000 acres of public land. This proposed action is being taken in response to increasing use and the changing needs and interests of public land users of this popular recreation area located near the city of Gunnison. The BLM will work collaboratively with interested parties to identify the management decisions that

are best suited to local, regional, and national needs and concerns. The public scoping process will identify planning issues and develop planning criteria, including an evaluation of the existing management direction in the context of the needs and interests of the public. It is probable that the collaborative planning process will recommend changes to the Gunnison RMP for this area so this notice provides for this contingency. If desired management actions identified in the planning process can be carried out within the existing guidance of the RMP then an RMP Amendment will not be necessary.

DATES: This notice initiates the public scoping process. Comments on issues and planning criteria may be submitted in writing to the address listed below and will be accepted throughout the creation of the Draft RAMP/Draft EA. All public meetings will be announced through the local news media, newsletters, and other mediums at least 15 days prior to the event. The minutes and list of attendees for each meeting will be available to the public and open for 30 days to any participant who wishes to clarify the views they expressed. Public meetings will be held throughout the plan scoping and preparation period. To ensure local community participation and input, public meetings will be scheduled at times that are convenient for the public to attend. Early participation is encouraged to help determine the future management of the Hartman Rocks Recreation Area.

ADDRESSES: Written comments should be sent to Bureau of Land Management, Gunnison Field Office, 216 N. Colorado St., Gunnison, CO 81230; Fax (970) 642–4425. Documents pertinent to this proposal may be examined at the Gunnison Field Office. Comments, including names and street addresses of respondents, will be available for public review at the Gunnison Field Office during regular business hours (7:30am to 4:30pm), Monday through Friday, except holidays, and may be published as part of the EA. Individual respondents may request confidentiality. If you wish to withhold your name or street address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations and businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: For further information and/or to have your name added to our mailing list, contact Arden Anderson, Telephone—(970) 642–4454; E-mail—*Arden_Anderson@co.blm.gov*

SUPPLEMENTARY INFORMATION: The Hartman Rocks Recreation Area is a popular site for a variety of recreation activities in the urban interface zone near Gunnison, Colorado. The increased use over the years as well as changing needs and interests of the public necessitates a more detailed management strategy beyond the general guidelines contained in the Gunnison RMP (completed in 1993). Preliminary issues and management concerns have been identified by BLM personnel, other agencies, and in meetings with individuals and user groups. They represent the BLM's knowledge to date on the existing issues and concerns with current management. The major issue themes that will be addressed in the plan include: Management and protection of public land resources; recreation/visitor use and safety; access and transportation on the public lands; integrating management with the needs of the community and other agencies; reducing conflicts between different public land visitors and balancing multiple uses.

After gathering public comments on what issues the plan should address, the suggested issues will be placed in one of three categories:

1. Issues to be resolved in the plan;
2. Issues resolved through policy or administrative action; or
3. Issues beyond the scope of this plan.

Rationale will be provided in the plan for each issue placed in category two or three. In addition to these major issues, a number of management questions and concerns will be addressed in the plan. The public is encouraged to help identify these questions and concerns during the scoping phase.

An interdisciplinary approach will be used to develop the plan in order to consider the variety of resource issues and concerns identified. Disciplines involved in the planning process will include specialists with expertise in outdoor recreation, rangeland management, archaeology, wildlife, fisheries and soils.

Dated: December 6, 2003.

Barry A. Tollefson,

Gunnison Field Manager.

[FR Doc. 03–3165 Filed 2–7–03; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–116–6310–PB; HAG03–0031]

Notice of Intent To Prepare an Environmental Impact Statement for the Development of the Timber Mountain/John's Peak Off-Highway Vehicle Management Plan

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice of Intent to prepare an environmental impact statement (EIS) for the development of the Timber Mountain/John's Peak Off-Highway Vehicle (OHV) Management Plan, and initiation of public scoping.

SUMMARY: The Medford District of the Bureau of Land Management (BLM) is developing an Environmental Impact Statement (EIS) for the management of off-highway vehicle (OHV) use in the Timber Mountain/John's Peak OHV area. The BLM designated the Timber Mountain/John's Peak area ''specifically to provide for OHV use'' in the 1995 Medford District Resource Management Plan (RMP). The RMP directs the agency to, ''Manage off-highway vehicle use on BLM-administered land to protect natural resources, provide visitor safety, and minimize conflicts among various users.'' The development of the Timber Mountain/John's Peak OHV Management Plan will provide site-specific guidance for managing OHV use in accordance with the Medford District RMP direction. Approximately 13,865 acres of public land in Oregon are being considered in this planning effort. The public scoping process will be used to identify interested and affected individuals and groups, and to identify issues associated with the management of OHV use in the Timber Mountain/John's Peak area. Issues identified through the scoping process will be used to explore a range of possible alternatives for managing OHV use in this area.

DATES: Comments concerning the scope of the analysis should be received in writing 30 days from publication of this notice, to ensure timely consideration. Public scoping meetings and/or field tours will be held to provide the public with information on the planning process and to provide for opportunities for the public to share their concerns and ideas with the BLM. Meeting dates and locations will be announced through mailings, the local news media, and on the BLM Web site (*http://www.or.blm.gov*).

ADDRESSES: Send written comments to: Richard J. Drehobl, Ashland Field Manager, Medford District Bureau of Land Management, 3040 Biddle Road, Medford Oregon, 97504.

Pursuant to 7 CFR Part 1, Subpart B, § 1.27, all written submissions in response to this notice, public scoping letters, and draft and final Environmental Impact Statements will be made available for public inspection including the submitter's name and address, unless the submitter specifically requests confidentiality. If you wish to withhold your name or address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses, submitted on official letterheads, and from individuals identifying themselves as representatives or officials of organization or businesses, will be made available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: Kristi Mastrofini at (541) 618–2384 or Don Ferguson at (541) 618–2292. Fax or E-mail can be sent to the attention of Kristi Mastrofini or Don Ferguson at (541) 618–2400, or *110mb@or.blm.gov*.

SUPPLEMENTARY INFORMATION: OHV enthusiasts have recreated in the Timber Mountain/John's Peak area for 40 to 50 years. The 1995 Medford District Resource Management Plan (RMP) designated public lands in the Timber Mountain/John's Peak area as an OHV use area. The area is comprised of a checkerboard of BLM administered lands mixed with private lands (including lands owned by the City of Jacksonville, Motorcycle Riders Association, and Boise Corporation), increasing the complexity of managing trails and public access in the area. Off-highway vehicle use has increased tremendously in recent years, leading to the proliferation of new unauthorized trails on both public and private lands. Many existing trails are in good condition, while other trails are experiencing erosion that is leading to resource degradation. Due to the close proximity to the City of Jacksonville and adjacent wildland urban interface areas, and the checkerboard pattern of land ownership, there is also a high level of unauthorized access across private lands and vandalism (*e.g.* illegal dumping, sign shooting, etc). The Timber Mountain/John's Peak OHV Management Plan is needed to provide for OHV use in accordance with the Medford District RMP.

Preliminary public scoping for the Timber Mountain/John's Peak Management Plan began in 1998; however, due to limited funding, work on this project was temporarily deferred. The following issues were identified to be associated with OHV use in the Timber Mountain/John's Peak OHV area: Effects to water quality and riparian conditions; effects on sensitive soils; effects to Threatened or Endangered plants, fish, and wildlife; and impacts to private land owners associated with the incidence of trespass on private lands. Through additional public scoping and specialist review, this list of issues will be refined. Issues determined to be significant to the planning process will be used to develop a range of alternatives for managing OHV use in the Timber Mountain/John's Peak OHV area.

The National Environmental Policy Act encourages the use of cooperative relationships with Federal, State, and local agencies to capture opportunities where the decision-making authorities or special expertise of other agencies can enhance the planning process. The Medford District BLM, as the Lead Agency for this EIS, has identified opportunities to work cooperatively with Jackson County, the City of Jacksonville, the State of Oregon Parks and Recreation Department, Boise Cascade, and the Motorcycle Riders Association. The Medford District BLM will seek cooperative relationships with these local agencies and affected landowners to enhance this planning effort.

As public scoping progresses, other opportunities for cooperative relationships may become apparent.

Dated: November 15, 2002.

Richard J. Drehobl,

Field Manager, Ashland Resource Area.

Ron Wenker,

District Manager, Medford District BLM.

[FR Doc. 03–3164 Filed 2–7–03; 8:45 am]

BILLING CODE 3710–AR–U

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–930–1430–ES; N–76527]

Notice of Realty Action: Recreation and Public Purposes (R&PP) Act Classification; Conveyance of Public Lands Near Beatty, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Classification of public land for conveyance pursuant to the Recreation and Public Purposes Act.

SUMMARY: The following described public land in Nye County, Nevada has been examined and found suitable for conveyance under provisions of the Recreation and Public Purposes Act of June 14, 1926, as amended (43 U.S.C. 869 *et seq.*), for the purposes of operating a municipal solid waste transfer station. These lands are hereby classified as suitable for conveyance in accordance with section 7 of the Taylor Grazing Act, 43 U.S.C. 315f, and Executive Order No. 6910:

Mount Diablo Meridian, Nevada

T. 12 S., R. 46 E.,
sec 13, S½NW¼NW¼NW¼.
Containing 5 acres more or less.

The solid waste transfer station will occupy a total of ten acres, five of which were previously classified under a notice for the existing Beatty Landfill (N–35639).

The lands are not needed for Federal purposes. Conveyance is consistent with BLM land use planning and would be in the public interest. Patent will be issued to Nye County and will be subject to the provisions of the Recreation and Public Purposes Act and applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States, pursuant to the Act of August 30, 1890 (43 U.S.C. 945);

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove such deposits from the same under applicable law and regulations to be established by the Secretary of the Interior.

Patent will contain the following provisions:

1. Nye County a political subdivision of the State of Nevada, assumes all liability for and shall defend, indemnify, and save harmless the United States and its officers, agents, representatives, and employees (hereinafter referred to in this clause as the United States), from all claims, loss, damage, actions, causes of actions, expense, and liability (hereinafter referred to in this clause as claims), resulting from, brought for, or on account of, any personal injury, threat of personal injury, or property damage received or sustained by any person or persons (including the patentees employees) or property growing out of, occurring, or attributable directly or indirectly, to the disposal of solid waste

on, or the release of hazardous substances from Mount Diablo Meridian, Nevada, T. 12 S., R. 46 E., sec. 13, S½NW¼NW¼NW¼, N½SW¼NW¼NW¼, regardless of whether such claims shall be attributable to: (1) The concurrent, contributory, or partial fault, failure or negligence of the United States;

2. A portion of the above described land was used as a solid waste disposal site, and will continue to be used as solid waste transfer station. Upon closure, the site may contain small quantities of commercial and household wastes as determined in the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6901), and defined in 40 CFR 261.4 and 261.5. Although there is no indication these materials pose any significant risk to human health or the environment, future land uses should be limited to those which do not penetrate the liner of final cover of the site unless excavation is conducted subject to applicable State and Federal requirements;

3. No portion of the land shall under any circumstances revert to the United States if any portion has been used for solid waste disposal or for any other purpose which may result in the disposal, placement, storage, or release of any hazardous substance;

and will be subject to valid existing rights.

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Tonopah Field Station, 1553 South Main Street, Tonopah, Nevada. The subject lands were previously classified and segregated for the purposes of a lease authorizing a sanitary landfill pursuant to the Recreation and Public Purposes Act. Further segregation will not be required.

For a period of 45 days from the date of publication of this Notice in the **Federal Register**, interested parties may submit comments regarding the proposed conveyance or classification of the lands to the Assistant Field Station Manager, Tonopah Field Station, PO Box 911, Tonopah, NV 89049.

Classification Comments

Interested parties may submit comments involving the suitability of the land for use as a municipal solid waste transfer station. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Application Comments

Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for the uses described.

Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification of the land will become effective 60 days from the date of publication of this Notice in the **Federal Register**. The lands will not be conveyed until after the classification becomes effective.

Dated: January 6, 2003.

William S. Fisher,

Assistant Field Manager, Tonopah.

[FR Doc. 03–3170 Filed 2–7–03; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–050–5853–EU]

Notice of Reality Action: Modified Competitive Sale of Public Lands in Clark County, Nevada, to the City of Las Vegas, N–74816 and N–74822

AGENCY: Bureau of Land Management, Interior.

ACTION: Modified Competitive Sale.

SUMMARY: The following described lands have been designated for disposal under Pub. L. 105–263, the Southern Nevada Public Land Management Act of 1998 (112 Stat. 2343); they will be sold modified competitively in accordance with section 203 and section 209 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750, 43 U.S.C. 1713, 1719) at not less than the appraised fair market value (FMV).

Mount Diablo Meridian, Nevada

T. 20S., R. 59E.,
Sec. 12, E½NE¼NE¼NE¼,
T. 19S., R. 60E.,
Sec 21, S½S½SE¼NE¼SE¼,
T. 20S., R. 60E.,
Sec. 7, lots 8 and 9
Consisting of 18.61 acres, more or less.

These parcels of land, situated in the Las Vegas Valley are being offered as a modified competitive sale to the City of Las Vegas.

When the land is sold, conveyance of the locatable mineral interests will occur simultaneously with the sale of the land. The locatable mineral interests being offered have no known mineral value. Acceptance of a sale offer will constitute an application for conveyance of those mineral interests. The applicant will be required to pay a $50.00 non-refundable filing fee for processing of the conveyances of the locatable mineral interests for N–74816 and N–74822.

The terms and conditions applicable to the sale are as follows:

All Parcels are Subject to the Following:

1. All leasable and salable mineral deposits are reserved on land sold; permittees, licensees, and lessees, retain the right to prospect for, mine, and remove the minerals owned by the United States under applicable law and regulations that the Secretary of the Interior may prescribe, including all necessary access and exit rights.

2. A right-of-way is reserved for ditches or canals constructed by the authority of the United States, under the Act of August 30, 1890 (43 U.S.C. 945).

3. All land parcels are subject to all valid existing rights. Parcels may also be subject to applications received prior to publication of this notice if processing the application would have no adverse effect on the FMV. Encumbrances of record are available for review during business hours, 7:30 AM to 4:15 PM, Monday through Friday, at the BLM, Las Vegas Field Office (LVFO), at 4701 N. Torrey Pines, Las Vegas, Nevada.

4. All land parcels are subject to reservations for roads, public utilities and flood control purposes both existing and proposed, in accordance with the local governing entities' Transportation Plans.

5. All purchasers/patentees, by accepting a patent, agree to indemnify, defend, and hold the United Stated harmless from any costs, damages, claims, causes of action, penalties, fines, liabilities, and judgments of any kind or nature arising from the past, present, and future acts or omissions of the patentee or their employees, agents, contractors, or lessees, or any third-party, arising out of, or in connection with, the patentee's use, occupancy, or operations on the patented real property. This indemnification and hold harmless agreement includes, but is not limited to, acts and omissions of the patentee and their employees, agents, contractors, or lessees, or any third party, arising out of or in connection with the use and/or occupancy of the patented real property which has already resulted or does hereafter result in: (1) Violations of federal, state, and local laws and regulations that are now, or may in the future become, applicable to the real property; (2) Judgments, claims or demands of any kind assessed

against the United States; (3) Costs, expenses, or damages of any kind incurred by the United States; (4) Other releases or threatened releases of solid or hazardous waste(s) and/or hazardous substances(s), as defined by federal or state environmental laws, off, on, into or under land, property and other interests of the United States; (5) Other activities by which solids or hazardous substances or wastes, as defined by federal and state environmental laws are generated, released, stored, used or otherwise disposed of on the patented real property, and any cleanup response, remedial action, or other actions related in any manner to said solid hazardous substances or wastes; or (6) Natural resource damages as defined by federal state law. This covenant shall be construed as running with the patented real property and may be enforced by the United States in a court of competent jurisdiction.

Each parcel will be offered by sealed bid. All sealed bids must be received at the BLM, LVFO, 4701 N. Torrey Pines Dr., Las Vegas, Nevada, 89130, no later than 4:15 PM, PST, on March 3, 2003. Sealed bid envelopes must be marked on the lower front left corner with the parcel number and sale date. Bids must be for not less than the appraised FMV and a separate bid must be submitted for each parcel.

Each sealed bid shall be accompanied by a certified check, money order, bank draft, or cashiers check made payable to the BLM for not less that 10 percent of the amount bid. Sealed bids will be opened at 10 AM on March 4, 2003, at the BLM, LVFO.

If no sealed bids are received, the parcels will be sold to the City of Las Vegas at the appraised FMV.

The City of Las Vegas shall have the right to meet the highest bid. Refusal or failure to meet the highest bid shall constitute a waiver of the City's preferential consideration. If the City meets the highest bid, it must submit the required bid deposit by 4:15 PM on the day of the sale in the form of cash, personal check, bank draft, cashiers check, money order or any combination thereof, made payable to the BLM, for not less than 20 percent of the amount bid.

The remainder of the full bid price must be made within 180 calendar days of the sale date. Failure to pay the full price within 180 days will disqualify the apparent high bidder and cause the entire bid deposit to be forfeited to the BLM.

Federal law required bidders to be U.S. citizens 18 years of age of older; a corporation subject to the laws of any State of the United States; a State, State instrumentality, or political subdivision authorized to hold property; or an entity including, but not limited to associations or partnerships capable of holding property or interests therein under the law of the State of Nevada. Certification of qualification, including citizenship or corporation or partnership, must accompany the bid deposit.

In order to determine the fair market value of the subject public lands through appraisal, certain assumptions have been made of the attributes and limitations of the lands and potential effects of local regulations and policies on potential future land uses. Through publication of this Notice of Realty Action, the BLM gives notice that these assumptions may not be endorsed or approved by units of local government. Furthermore, no warranty of any kind shall be given or implied by the United States as to the potential uses of the lands offered for sale, and conveyance of the subject lands will not be on a contingency basis. It is the buyers' responsibility to be aware of existing projects and use of nearby properties. When conveyed out of Federal ownership, the lands will be subject to applicable reviews and approvals by the respective unit of local government for proposed future uses, and any such reviews and approvals would be the responsibility of the buyer. Any land lacking access from a public road or highway will be conveyed as such, and future access acquisition will be the responsibility of the buyer.

Upon publication of this Notice and until the completion of the sale, the Bureau of Land Management (BLM) is no longer accepting land use applications affecting any of those parcels being offered at this sale. After publication of this Notice any application filed for rights-of-way, permits, leases, and other uses of the offered parcels will be rejected and retuned to the applicant.

Detailed information concerning the sale, including the reservations, sale procedures and conditions and planning and environmental documents are available for public review at the BLM, LVFO, at 4701 N. Torrey Pines, Las Vegas, Nevada, 89130, or by calling (702) 515–5000. Appraisals for each parcel are also available for public view.

For a period of 45 days from the date of publication of this Notice in the **Federal Register**, the general public and interested parties may submit comments to the Field Manager, LVFO, 4701 N. Torrey Pines, Las Vegas, Nevada, 89130. Any adverse comments will be reviewed by the State Director, who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, this realty action will become the final determination of the Department of the Interior. The BLM may accept or reject any or all offers, or withdraw any land or interest in the land from sale, if, in the opinion of the authorized officer, consummation of the sale would not be fully consistent with FLPMA and other applicable laws or is determined not in the publics interest. Any comments received during this process, as well as the commentor's name and address, will be available to the public in the administrative record and/or pursuant to a Freedom of Information Act request. You may indicate for the record that you do not wish your name and/or address be made available to the public. Any determination by the BLM to release or withhold the names and/or addresses of those who comment will be made on a case-by-case basis. A commentor's request to have their name and/or address withheld from public release will be honored to the extent permissible by law.

The Land will not be offered for sale until at least 60 days after the date of publication of this Notice in the **Federal Register**.

Dated: November 18, 2002.

Mark T. Morse,

Field Manager.

[FR Doc. 03–3171 Filed 2–7–03; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–100–1430–03; UTU–78364]

Notice of Realty Action

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of realty action; Recreation and Public Purposes (R&PP) Act Classification; Utah.

SUMMARY: The following public land, located in Washington County, Utah, has been examined and found suitable for classification for lease or conveyance to the Northwestern Special Service District under the provision of the Recreation and Public Purposes Act. As amended (43 U.S.C. 869 *et.seq.*):

Salt Lake Meridian, Utah

T. 39 S., R. 16 W.,

Sec. 28, NE¼NE¼NW¼SW¼,

Containing 1.5 acres, more or less.

SUPPLEMENTARY INFORMATION: The Northwestern Special Service District proposes to use the land to construct, operate and maintain a fire station. The land is not needed for Federal purposes. Leasing or conveying title to the affected public land is consistent with current BLM land use planning and would be in the public interest.

The lease or patent, when issued, would be subject to the following terms, conditions, and reservations:

1. Provisions of the Recreation and Public Purposes Act and all applicable regulations of the Secretary of the Interior.

2. A right-of-way for ditches and canals constructed by the authority of the United States.

3. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove the minerals.

4. Those rights for water well, water pipeline and road access purposes granted to Veyo Culinary Water Association by right-of-way U–74785.

5. Those rights for road access purposes granted to James Wilson by right-of-way U–71135.

Detailed information concerning this action is available at the office of the Bureau of Land Management, St. George Field Office, 345 E. Riverside Drive, St. George, Utah 84790. Upon publication of this notice in the **Federal Register**, the land will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for leasing or conveyance under the Recreation and Public Purposes Act and leasing under the mineral leasing laws. For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested persons may submit comments regarding the proposed classification, leasing or conveyance of the land to the Field Office Manager, St. George Field Office.

Classification Comments

Interested parties may submit comments involving the suitability of the lands for a fire station. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Application Comments

Interested parties may submit comments regarding the specific use proposed in the Northwestern Special Service District's application, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for fire station purposes. Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication of this notice.

Dated: January 10, 2003.

James D. Crisp

Field Office Manager.

[FR Doc. 03–3166 Filed 2–7–03; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–030–03–1220–PD–241A]

Final Supplementary Rules for the Sand Mountain and the Walker Lake Recreation Areas; Churchill and Mineral Counties, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Final supplementary rules.

SUMMARY: The Carson City Field Office Manager establishes these supplementary rules to provide for the protection of persons, property, and public lands and resources. They consolidate and clarify rules published in previous **Federal Register** notices, establish that Sand Mountain will be subject to a user fee collection and establish additional supplemental rules of conduct for visitors to the Sand Mountain and the Walker Lake Recreation Areas.

EFFECTIVE DATE: March 12, 2003.

ADDRESSES: Mail: Manager, Carson City Field Office, 5665 Morgan Mill Road, Carson City, Nevada 89701. Personal or messenger delivery: 5665 Morgan Mill Road, Carson City, Nevada 89701. Internet e-mail: *Christina_Miller@nv.blm.gov*

FOR FURTHER INFORMATION CONTACT: Chris Miller, Outdoor Recreation Planner, or Chuck Pope, Assistant Manager, Non-Renewable Resources, Carson City Field Office, 5665 Morgan Mill Road, Carson City, Nevada 89701. Telephone (775) 885–6000. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, 24 hours a day, 7 days a week.

SUPPLEMENTARY INFORMATION:

I. Background
II. Discussion of Rule
III. Responses to Comments
IV. Procedural Matters

I. Background

BLM published the interim final supplementary rules at 43 CFR part 8365 on August 22, 2002. These supplementary rules were intended to amplify rules that were originally published in 1992. The period for public comment on the interim final rules expired on September 23, 2002. BLM received 36 public comment letters or other communications during this comment period.

The public lands affected by these restrictions are described as follows:

Sand Mountain Recreation Area

Mt. Diablo Meridian

T. 16 N., R 32 E.,
Sec. 4: Lots 1–4 inclusive, SW1/4NE1/4, S1/2NW1/4, N1/2SW1/4, SW1/4SW1/4;
Sec. 5: Lots 1–4 inclusive, S1/2N1/2, All public land north of U.S. Route 50;
T. 17 N., R 32 E.,
Sec. 15: S1/2S1/2;
Sec. 16: SE1/4SE1/4;
Sec. 20: SE1/4;
Sec. 21: All
Sec. 22: W1/2, NE1/4;
Sec. 28: All
Sec. 29: All
Sec. 32: All
Sec. 33: All

Walker Lake Recreation Area

Includes all public land east of U.S. Route 95 to Walker Lake within:

Mt. Diablo Meridian

T. 10 N., R 29 E.,
Sec. 5:
Sec. 8:
Sec. 17:
Sec. 20:
Sec. 29:
Sec. 32:

II. Discussion of Rules

Certain prohibited activities other than those included in the 1992 supplementary rules were recommended in the Recreation Area Management Plan for the Sand Mountain Recreation Area prepared in 1985. These recommendations subsequently were published as specific prohibited acts in the **Federal Register** on July 1, 1992. The Plan was supplemented in 1993, and these rules require minor modification and clarification.

Certain other supplementary rules are necessary in order to provide for the safety of visitors to the Recreation Areas. Speed limits are needed on access roads and in designated camping areas. Ignition of fireworks is a violation of State law and a danger to both persons and property.

We need to clarify existing rules to protect plant life, wildlife habitat and historic resources, and we are proposing additional rules due to increases in public use. Indiscriminate vehicle use in that portion of the Sand Mountain Recreation Area, where the off-road vehicle designation is ''limited'', has destroyed vegetation, caused harassment of wildlife, and threatens the integrity of the Sand Springs Pony Express Station and Desert Study Area. These supplementary rules specifically identify those routes that are open to vehicle use within this ''limited'' designation area. Rules regarding the closure of certain lands within the Recreation Area to camping were published in the **Federal Register** on July 1, 1992. This notice contains a legal description of those lands and designates the area of Developed Recreation Site for the Walker Lake Recreation Area.

III. Responses to Comments

In this portion of the Supplementary Information, we will discuss the sections of the proposed rules upon which the public commented, or that need to be changed for some other reason. If we do not discuss a particular section or paragraph, it means that no public comments addressed the provision. However, we may change the wording of other sections where we find clarification or style changes necessary or appropriate, and there is no other need for substantive amendment in the final rule.

Section 1.a and Section 3.a: Two comments suggested not requiring whip flags to be attached to motorcycles. BLM considers that any vehicle driving on the dunes may be obscured from view by the crest of a dune and thus not seen by other drivers or pedestrians. The use of whip flags increases vehicle visibility and thereby improves recreation safety.

Section 1.c: We had three comments on lifting the restricted area or limited OHV area status at Sand Mountain. The limited OHV designations have been in place since 1988, CFR, Vol. 53, No. 179, page 35917, Sept. 15, 1988 (NV–030–08–4333–13). The restrictions and limited use areas protect cultural and biological resources, including a Pony Express station, which is a historical landmark surrounded by dune vegetation. This site has been closed to vehicle access since 1988.

Section 1 other comments: There were three comments on making it illegal not to wear helmets or riding double. The BLM feels these are more of a State issue and should be addressed by the State. In addition, there were two comments on using more of California State language for the regulations. The language used in these rules is common Code of Federal Regulation language and is enforceable as is.

Section 2. b. No comments addressed this paragraph of the supplementary rules. However, in the final rules we have extended the no camping restriction to three miles beyond the boundary of the Recreation Area instead of just one mile. Camping in this area to avoid paying camping fees could have serious negative impacts on two sensitive plant species and 35 historic and prehistoric cultural sites. We find the need to protect these resources constitutes good cause for changing this restriction without further opportunity for public comment. In addition, expansion of this camping restriction will protect two watering tanks maintained by a rancher who leases this area for cattle and a Navy radar site.

Section 2. c: We had a comment on how we will enforce some kind of noise regulation, especially at night. This enforcement will be based on the number of complaints law enforcement personnel receive on the situation, and will be focused on the campground proper. Use of the surrounding area is primarily for motorized recreation, so remoteness and tranquility are not resource values to be protected here, but we wish to assure our visitors that they will have a peaceful night's sleep.

Section 2. d and Section 3. j: At least half the comments concerned fees. Some individuals felt that no fees should be charged on public lands. Most felt our proposed weekly use fee of $20 was too high, but that the annual fee was fine. Many of the comments felt that fees are appropriate at Sand Mountain as long as they were used to improve the site. They had opinions on what resource and recreation projects the fees should be used for. The majority of comments said they wanted to see more of a BLM presence on site, law enforcement and otherwise. The BLM's current cost to run Sand Mountain, including facility maintenance and health and safety programs, justifies the current fee schedule.

Section 2. e: This rule was added based on verbal and written complaints about visitors roping off large areas during busy weekends. The campground is limited and there are no reserved spaces, thus the first come first served rule applies.

Section 3. e: Many individuals felt they should be able to light fireworks in the dunes area and did not like this restriction. BLM is complying with a Churchill County ordinance (9.08.020) prohibiting fireworks in the county.

Section 3. f: We received two comments on limiting noise in the campground and how the BLM will enforce this. See the response in Sec. 2 c.

Section 3. g: We had two comments regarding limiting glass containers on the dunes to prevent damaged tires. However, individuals thought they should be allowed to use glass containers in motor homes or closed vehicles. We amended this section to allow for such uses, because many items necessary for daily living in motor homes come in glass containers, the risk of litter from these sources is substantially less if they are used in the motor homes, and BLM is not inclined to perform routine searches of vehicles for glass containers. We will issue citations to persons found with glass containers outside of vehicles and motor homes.

Section 3. I: This section received the second most responses next to the fee issue. Most individuals felt a definition of gray water should be included or that gray water was not an issue. The BLM is concerned about the health and safety of 40,000-plus visitors a year. The definition was changed to prohibit gray water dumping from a vehicle or trailer. Visitors must dump their water at legal dumping stations presently located in Fallon.

Section 3. k: Two comments suggested that we require dogs to be on a leash or controlled by owners. The BLM felt this a reasonable safety request and added this.

Section 3. l: This rule prohibiting rolling object down dunes was added based on two written comments and many verbal comments received during the comment period by BLM staff at Sand Mountain addressing the safety hazard created by rolling tires down the dunes. The BLM felt this was covered under other recreation articles, but added this as a site specific-prohibited act because of ongoing behavior at Sand Mountain.

Supplementary Rules for the Walker Lake Recreation Area. We received no comments addressing Walker Lake. Thus, this section was left as presented in the interim final rule.

IV. Procedural Matters

These supplementary rules are not a significant regulatory action and are not subject to review by Office of Management and Budget under Executive Order 12866. These supplementary rules will not have an effect of $100 million or more on the economy. They will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. These supplementary rules will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. These supplementary rules do not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the right or obligations of their recipients; nor do they raise novel legal or policy issues.

BLM has determined that the supplementary rules are categorically excluded from environmental review under section 102(2)(C) of the National Environmental Policy Act, pursuant to 516 Departmental Manual (DM), Chapter 2, Appendix 1. In addition, the supplementary rules do not meet any of the 10 criteria for exceptions to categorical exclusions listed in 516 DM, Chapter 2, and Appendix 2. Pursuant to Council on Environmental Quality regulations (40 CFR 1508.4) and the environmental policies and procedures of the Department of the Interior, the term ''categorical exclusions'' means a category of actions which do not individually or cumulatively have a significant effect on the human environment and that have been found to have no such effect in procedures adopted by a Federal agency and for which neither an environmental assessment nor an environmental impact statement is required.

Congress enacted the Regulatory Flexibility Act of 1980, as amended, 5 U.S.C. 601–612, to ensure that Government regulations do not unnecessarily or disproportionately burden small entities. The RFA requires a regulatory flexibility analysis if a rule would have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. These supplementary rules are not a ''major rule'' as defined at 5 U.S.C. 804(2). These rules are limited in scope to a small parcel of public land and are intended to establish rules of conduct and acceptable behavior at the site for the protection of resources and the visiting public.

These supplementary rules do not impose an unfunded mandate on state, local, or tribal governments or the private sector of more than $100 million per year; nor do these supplementary rules have a significant or unique effect on state, local, or tribal governments or the private sector. These supplementary rules do not require funding or resources from state, local, or tribal governments. These supplementary rules do not affect private property or property rights nor are they intended to deny or constrain any valid existing right. Therefore, BLM is not required to prepare a statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*).

These supplementary rules do not represent a government action capable of interfering with constitutionally protected property rights. The supplementary rules are applicable only on public land managed by the BLM and do not extend to adjacent private property. No taking of private property is contemplated in these supplementary rules. Therefore, the Department of the Interior has determined that the supplementary rules would not cause a taking of private property or require further discussion of takings implications under this Executive Order.

The supplementary rules will not have a substantial direct effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. These supplementary rules are intended to protect property, resources, and the visiting public on a designated area of public land. The scope and effect of these supplementary rules are limited to those public purposes and do not redefine or impact established governmental structures, responsibilities, policies, or procedures. Therefore, in accordance with Executive Order 13132, BLM has determined that these supplementary rules do not have sufficient Federalism implications to warrant preparation of a Federalism Assessment.

Under Executive Order 12988, we have determined that these supplementary rules will not unduly burden the judicial system and that these supplementary rules meet the requirements of sections 3(a) and 3(b)(2) of the Order. These supplementary rules have been written in plain text and are clearly understandable.

In accordance with Executive Order 13175, we have found that this final rule does not include policies that have tribal implications. These supplementary rules do not impact tribal lands nor are they intended to limit or interfere with any right or privilege granted to Native Americans.

These supplementary rules do not contain information collection requirements that the Office of Management and Budget must approve under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*

The principal author of these supplementary rules is Stanley Zuber of the Carson City Field Office, Bureau of Land Management, and Department of the Interior.

For the reasons stated in the preamble, and under the authority of 43 CFR part 8360, §§8364.1, 8365, 8365.1–2, 8365.1–6 and 8365.2, the BLM State Director, Nevada, issues the following supplementary rules:

Dated: November 26, 2002.

Robert V. Abbey,

State Director, Nevada.

Supplementary Rules for the Sand Mountain Recreation Area

Sec. 1 Motor Vehicle Rules

a. All motorized vehicles, other than those traveling on maintained roads, must be equipped with an 8 foot whip mast and a six (6) inch by twelve (12) inch solid red or orange colored safety flag. Flags may be pennant, triangle, square, or rectangular shape. The mast must be securely mounted on the vehicle and extend eight (8) feet from the ground to the mast tip when the vehicle is stopped. Safety flags must be attached within 10 inches of the tip of the whip mast with club or other flags mounted below safety flag or on another whip.

b. You must not operate any motorized vehicle in excess of 25 mph on any maintained road within the Recreation Area, or in excess of 15 mph within any designated camping area.

c. Within that portion of the Recreation Area where vehicle use is designated as ''limited'', there are only two roads open to motorized vehicles. These roads are:

(1) The main access road leading from U.S. Route 50 to the northernmost restroom facility and,

(2) The secondary access road leading from the main access road to the parking area near the Sand Springs Pony Express Station and Desert Study Area.

d. No person shall drink an alcoholic beverage, or have in their possession or on their person any open container that contains an alcoholic beverage, while operating in or on a motorized vehicle.

Sec. 2 Other Restrictions on Recreation Use.

a. At Sand Mountain, you must camp only in the area designated for that purpose. The designated camping area is:

Mt. Diablo Meridian

T. 17 N., R. 32 E.,
Sec. 28 SW1/4:

b. You must not camp on any other public lands within the Sand Mountain Recreation Area, in Sec. 5, T.16N, R.32E, or within three miles of the boundary of the Recreation Area.

c. You must not operate or use any audio equipment, such as a radio, television, musical instrument, or other noise producing device, or motorized equipment, between the hours of 12 A.M. and 6 A.M. in a manner that makes unreasonable noise that disturbs other visitors; or operate or use a public address system without written authorization from the Field Office Manager.

d. Persons using the area will be subject to a user fee.

e. You must not enter, camp, park, or stay longer than one half hour within the Sand Mountain Recreation Area without properly paying required fees.

f. Reserving of camping spaces is prohibited; sites are allocated on a first come first serve basis.

Sec. 3 Prohibited Acts

You must not:

a. Operate a motorized vehicle in the Recreation Area without the attached safety flag as described under Sec. 1 a. of these supplementary rules;

b. Operate a motorized vehicle in excess of the posted speed limit;

c. Drink an alcoholic beverage, or have in your possession or on your person any open container that contains an alcoholic beverage, while operating in or on a motorized vehicle;

d. Camp outside the designated camping area described in Sec. 2 a. of these supplementary rules;

e. Discharge any firearms, fireworks, or projectiles;

f. Make any unreasonable noise that disturbs other visitors between the hours of 12 A.M. and 6 A.M. as described in Sec. 2 c. of these supplementary rules;

g. Possess or use any glass cup or bottle, empty or not, used for carrying any liquid for drinking purposes outside of enclosed vehicles, or camp trailers.

h. Bring in, dispose of or possess any firewood containing nails, screws, or other metal hardware.

i. Dump gray or wastewater at the Recreation Area directly from a vehicle or trailer. You must empty water and sewage tanks only at legal dumping stations. (The nearest one is presently located in Fallon.)

j. Use Sand Mountain Recreation Area without paying the user fee.

k. Keep animals not on a leash or tied. Animals must be kept on a leash not longer than six feet, whether held by hand or secured to a fixed object, or otherwise physically restricted at all times.

l. Freely roll down the dunes any object that creates a hazard to other users.

Sec. 4 Penalties

Under the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1733(a)), any person failing to comply with the supplemental rules provided in the notice may be subject to imprisonment for not more than 12 months, or a fine in accordance with the applicable provisions of 18 U.S.C. 3571, other penalties in accordance with 43 U.S.C. 1733, or both.

Sec. 5 Administrative and Emergency Use

These supplementary rules do not apply to emergency or law enforcement personnel, or BLM employees engaged in the performance of their official duties.

Supplementary Rules for the Walker Lake Recreation Area

Sec. 1 Motor Vehicle Rules

a. No person shall operate any motorized vehicle in excess of 25 mph on any maintained road within the Recreation Area, or in excess of 15 mph within any designated camping area.

b. No person shall drink an alcoholic beverage, or have in their possession or on their person any open container that contains an alcoholic beverage, while operating in or on a motorized vehicle.

Sec. 2 Developed Recreation Site

The following lands are designated as the developed recreation site as defined in 43 CFR 8360.0–5(c): all public land east of U.S. Route 95 to Walker Lake within—

Mt. Diablo Meridian

T. 10 N., R 29 E.,
Sec. 29;
Sec. 32:

Rules stated in 43 CFR 8365.2 apply to this area.

Sec. 3 Other Restrictions on Recreation Use

No person shall operate or use any audio equipment, such as a radio, television, musical instrument, or other noise producing device, or motorized equipment, between the hours of 12 A.M. and 6 A.M. in a manner that makes unreasonable noise that disturbs other visitors; or operate or use a public address system without written authorization from the Field Office Manager.

Sec. 4 Prohibited Acts

You must not:

a. Operate a motorized vehicle in excess of the posted speed limit;

b. Drink an alcoholic beverage, or have in your possession or on your person any open container that contains an alcoholic beverage, while operating in or on a motorized vehicle;

c. Discharge any firearms, fireworks, or projectiles.

d. Make any unreasonable noise that disturbs other visitors between the hours of 12 A.M. and 6 A.M. as described in Sec. 2 c. of these supplementary rules.

e. Possess or use any glass cup or bottle, empty or not, used for carrying any liquid for drinking purposes outside of enclosed vehicles, or camp trailers.

f. Bring in, dispose of or possess any firewood containing nails, screws, and other metal hardware.

g. Dump gray or wastewater at Walker Lake Recreation Area directly from a vehicle or trailer. You must empty water and sewage tanks only at legal dumping stations. (The nearest one is presently located in Hawthorne.)

h. Keep animals not on a leash or tied. Animals must be kept on a leash not longer than six feet, whether hand held or secured to a fixed object, or otherwise physically restricted at all times.

Sec. 5 Penalties

Under the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1733(a)), any person failing to comply with the supplemental rules provided in the notice may be subject to imprisonment for not more than 12 months, or a fine in accordance with the applicable provisions of 18 U.S.C. 3571, other penalties in accordance with 43 U.S.C. 1733, or both.

Sec. 6 Administrative and Emergency Use

These supplementary rules do not apply to emergency or law enforcement personnel, or BLM employees engaged in the performance of their official duties.

[FR Doc. 03–3168 Filed 2–7–03; 8:45 am]
BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

[NV–012 4700]

Notice of Intent To Prepare a Wild Horse Management Amendment to the Elko Resource Management Plan and Associated Environmental Assessment

AGENCY: Bureau of Land Management.

ACTION: Notice of intent to prepare a Wild Horse Management Amendment to the Elko Resource Management Plan (RMP) and associated environmental assessment (EA).

SUMMARY: This document provides notice that the Bureau of Land Management (BLM), Elko Field Office intends to prepare a Wild Horse Management Amendment to the Elko Resource Management Plan (1987) and

an associated Environmental Assessment to address current issues for four wild horse herd areas (HAs) (Diamond Hills, Little Humboldt, Owyhee, and Rock Creek) in the Elko RMP planning area. The RMP planning area is comprised of approximately 6 million acres of land in northeastern Nevada, of which the BLM administers over 3 million acres. The four HAs are all located in Elko County, NV. They comprise approximately 657,000 acres, of which about 92 percent are public lands. Decisions to be made by the RMP Amendment include designation of ''herd management areas'' on public lands within these HAs where wild horses can be managed in the long term. The BLM will work collaboratively with interested parties to make decisions best suited to local, regional, state and national needs and concerns for the management of wild horses.

DATES: This notice initiates the public scoping process. Comments on issues and planning criteria can be submitted in writing to the address listed below and will be accepted within 30 days following publication of this notice in the **Federal Register**. The public is also invited to participate in any of three public meetings to discuss the scope of the proposed amendment and environmental assessment. All public meetings will be announced through local news media, newsletters, and the BLM Web site at least 15 days prior to the event. Meetings will be held in Elko, NV; Eureka, NV; and Reno, NV.

ADDRESSES: Written comments for this planning effort may be submitted to BLM at any of the scoping meetings; in addition, comments can be submitted in person to the BLM's Elko Field Office, 3900 Idaho Street, Elko, Nevada, 89801. Comments may also be submitted via facsimile to 775–753–0255. Please address your comments to the attention of Bryan Fuell, Wild Horse Specialist. Documents pertinent to this proposal may be examined at the BLM Elko Field Office (see address above). Preliminary scoping information will also be available at each of the scoping meetings, and may be obtained by visiting the Elko Field Office Web site at *http://www.nv.blm.gov/elko.* If you wish to withhold your name and/or address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your comment. Such requests will be honored to the extent allowed by law. All submissions from an organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be available for public inspection in their entirety.

FOR FURTHER INFORMATION: For further information and/or to have your name added to our mailing list, contact Bryan Fuell, Wild Horse Specialist, Bureau of Land Management, Elko Field Office, 3900 Idaho Street, Elko, Nevada 89801; telephone (775) 753–0200.

SUPPLEMENTARY INFORMATION: HAs are limited to areas of public lands identified as habitat used by wild horses at time of the passage of the Wild Horse and Burro Act in 1971. The Elko RMP (1987) established four wild horse HAs (Diamond Hills, Little Humboldt, Rock Creek, Owyhee) with the objective to manage the wild horse populations and habitat in these areas consistent with other resource uses. Short- and long-term management actions prescribed by the 1987 RMP are to: (1) Manage the four herds at an appropriate management level; (2) monitor wild horse populations and habitat conditions; and (3) conduct wild horse gatherings as needed to maintain numbers. Since completion of the Elko RMP, monitoring of wild horse populations and habitat and completion of wild horse gatherings have occurred.

Approximately 657,000 acres make up the four HAs, of which 53,000 acres are privately owned lands. The Diamond Hills HA is in the southwest corner of the Elko RMP planning area. Due to its proximity to other wild horse HMAs managed by the Ely and Battle Mountain field offices of the BLM, this HA is often referred to as ''Diamond Hills North.'' The Little Humboldt, Rock Creek and Owyhee HAs are in the northwest portion of the planning area, and are next to HMAs that are administered by BLM's Winnemucca Field Office. The 1971 Wild Horse and Burro Act requires removal of wild horses from unfenced private land when requested by the private landowner. Verbal requests have been made to alleviate problems with wild horses on private land within the Rock Creek and Little Humboldt HAs.

The proposed Amendment would designate HMAs, which are established only on areas within HAs which wild horses can be managed for the long term. BLM planning regulations (43 CFR 1610) require preparation of planning issues and criteria to guide amendments or revisions of RMPs. A planning issue is a matter of controversy over a resource management topic that is well defined, about which a decision can be made and is within the BLM's authority and jurisdiction to resolve. Planning criteria are the constraints or ground rules that guide and direct the development of the plan or amendment, and determine how the planning team approaches the development of alternatives and, ultimately, selection of a preferred alternative. They ensure that plans are tailored to identified issues, and that unnecessary data collection and analyses are avoided. Wild horse monitoring and other information collected to support land health assessments since the 1987 Elko RMP was approved is available for use in completing analyses for this Amendment. Preliminary planning issues and criteria, developed internally, will be available for review and comment by the public during the 30-day scoping period established by this notice. The Elko Field Manager will approve the planning criteria following public scoping.

Dated: December 23, 2002.

Helen Hankins,

Field Manager, Elko Field Office.

[FR Doc. 03–3169 Filed 2–7–03; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Notice of Intent To Prepare a Resource Management Plan for the Ely District and Associated Environmental Impact Statement

AGENCY: Bureau of Land Management, Ely Field Office, Interior.

ACTION: Notice of Intent to prepare a comprehensive Resource Management Plan (RMP) and associated Environmental Impact Statement (EIS) for the Ely District, located within Lincoln and White Pine counties and the northeast portion of Nye County, Nevada.

SUMMARY: In compliance with the Federal Land Policy and Management Act of 1976, as amended (43 U.S.C. 1701 *et seq.*), and the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), the Bureau of Land Management (BLM) will prepare a Resource Management Plan to consider a range of alternatives for BLM management of public lands within the Ely District. In conjunction with the RMP, an associated EIS will be prepared to assess the environmental, social, and economic effects of the alternatives considered in the RMP. The BLM will work collaboratively with interested parties to identify the management decisions that are best suited to local, regional, and national needs and concerns. The public scoping process will identify planning

issues and develop planning criteria, including an evaluation of existing land use plans in the context of the needs and interest of the public.

DATES: This notice initiates the public scoping process. Comments on issues and planning criteria can be submitted in writing to the address listed below and will be accepted throughout the creation of the Draft RMP/Draft EIS. All public meetings will be announced through the local news media, newsletters, and the BLM Web site (*http://blm.ensr.com*) at least 15 days prior to the event. The minutes and list of attendees for each meeting will be available to the public and open for 30 days to any participant who wishes to clarify the views they expressed.

Public Involvement: Information on planning issues and planning criteria can be obtained by accessing the BLM Web site (*http://blm.ensr.com*) or by writing to the address listed below. Comments on issues and planning criteria can be submitted in writing to the address listed below and will be accepted throughout the creation of the Draft RMP/Draft EIS. The public will be invited to participate in the scoping process via attendance at public meetings and review of the draft RMP/EIS. All public meetings will be announced through the local news media, newsletters, and the BLM web site (*http://blm.ensr.com.*) The BLM has scheduled six public scoping meetings to obtain input on the issues to be addressed within the Ely RMP/EIS. The meetings will be held at the following locations: BLM Las Vegas Field Office; Mesquite, NV; Ely, NV; Reno, NV; Caliente, NV and Tonopah, NV.

These meetings will provide an opportunity for the public to learn about the Ely RMP/EIS process and to comment directly on the scope of the planning initiative. The public is encouraged to attend the scoping meetings and/or send written comments and suggestions concerning the preparation of the RMP/EIS by following the instructions below.

ADDRESSES: Written comments on the scope of the Ely RMP should be submitted within 60 days of the date of publication of this notice and addressed to: Bureau of Land Management, Gene A. Kolkman, Ely Field Manager, HC 33, Box 33500, Ely, NV 89301–9408; Fax 775–289–1910. Documents pertinent to this proposal may be examined at the Ely Field Office. Freedom of Information Act Considerations: Comments, including names and street addresses of respondents, will be available for public review at the Ely Field Office during regular business hours [7:30 a.m.–4:30 p.m. PST], Monday through Friday, except holidays, and may be published as part of the EIS. Individual respondents may request confidentiality. If you wish to withhold your name or street address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations and businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: For further information and/or to have your name added to our mailing list, contact Gene Drais, Project Manager for the Ely RMP/EIS, at the above address, telephone (775) 289–1880 or e-mail *gene_drais@nv.blm.gov.*

SUPPLEMENTARY INFORMATION: The BLM's Ely District comprises about 11.4 million acres of public land in all of Lincoln and White Pine counties, and the northeast portion of Nye County, Nevada. Comprehensive land use plan (LUP) evaluations of the Egan Resource Management Plan in 2001 and the Schell and Caliente Management Framework Plans (MFP) in 2002 indicated the need for LUP revisions to provide appropriate management of all BLM programs and to address deteriorating ecological conditions. A comprehensive RMP will be prepared for the entire Ely District. Restoring and maintaining the ecological health of Great Basin landscapes in eastern Nevada must be done in concert with collaborative partners, resource users, and local communities. In addition, the RMP/EIS will provide management direction for future implementation of the Great Basin Restoration Initiative (GBRI) within the Ely District. The restoration effort to implement the GBRI within the Ely District is called the Eastern Nevada Landscape Restoration Project.

Key issues likely to be considered in developing and analyzing alternatives to be addressed within the Ely RMP/EIS include: ecological health; air quality; water resources; cultural and paleontological resources; special status species of flora and fauna; fish and wildlife; wild horses; fire management; livestock grazing; recreation; lands and realty; minerals (including oil, gas, and geothermal); special land use designations (*i.e.* Wild Horse Herd Management Areas, Areas of Critical Environmental Concern); and socioeconomic effects of plan implementation. Based on analysis of these multiple factors, the BLM will select a preferred alternative for implementation in the final RMP, which will provide management direction for all Ely District programs. After gathering public comments on what issues the plan should address, the suggested issues will be placed in one of three categories:

1. Issues to be resolved in the plan;
2. Issues resolved through policy or administrative action; or
3. Issues beyond the scope of this plan.

Rationale will be provided in the plan for each issue placed in category two or three. In addition to these major issues, a number of management questions and concerns will be addressed in the plan. The public is encouraged to help identify these questions and concerns during the scoping phase.

Dated: December 18, 2002.

Gene A. Kolkman,

Field Manager.

[FR Doc. 03–3173 Filed 2–7–03; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–930–1430–ET; NVN–37749]

Notice of Proposed Extension of Withdrawal and Opportunity for Public Meeting; Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management proposes to extend the withdrawal of 10.72 acres of public land in Elko County to protect an administrative site. The withdrawal being extended is Public Land Order No. 6540. This withdrawal will expire on June 25, 2004, unless extended. The land is currently withdrawn from surface entry and mining, but not mineral leasing laws, by Public Land Order No. 6540.

DATES: Comments and requests for a meeting should be received on or before May 12, 2003.

ADDRESSES: Comments and meeting requests should be sent to the Nevada State Director, BLM, 1340 Financial Blvd., P.O. Box 12000, Reno, Nevada 89520.

FOR FURTHER INFORMATION CONTACT: Dennis J. Samuelson, BLM Nevada State Office, 702–861–6532.

SUPPLEMENTARY INFORMATION: On December 10, 2002, a petition was approved allowing the Bureau of Land Management to file an application extend Public Land Order No. 6540 which withdrew 10.72 acres of public land to protect the Elko Field Office Administrative Site (Public Land Order No. 6540, 49 FR 22480, FR Doc. 84–14397, May 30, 1984). An extension, if approved, would continue the withdrawal from all forms of appropriation, including the mining laws, for the following described public land:

Mount Diablo Meridian

T. 34 N., R. 55 E.,

Sec. 1, S½NW¼ (within).

See Public Land Order No. 6540 for a detailed metes and bounds description.

The area described contains 10.72 acres in Elko County.

The BLM proposes to extend the withdrawal an additional 20 years through June 24, 2024. The extension of the withdrawal would protect the Elko Field Office Administrative Site.

This withdrawal extension will be processed in accordance with the regulations set forth in 43 CFR 2300.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal extension may present their views in writing to the Nevada State Director of the Bureau of Land Management.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal extension. All interested persons who desire a public meeting for the purpose of being heard on the proposed extension must submit a written request to the Nevada State Director within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** and at least one local newspaper 30 days before the scheduled date of the meeting.

Dated: December 18, 2002.

Jim Stobaugh,

Lands Team Lead.

[FR Doc. 03–3167 Filed 2–7–03; 8:45 am]

BILLING CODE 4310–HC–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–486]

In the Matter of Certain Agricultural Tractors, Lawn Tractors, Riding Lawnmowers, and Components Thereof; Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint and motion for temporary relief were filed with the U.S. International Trade Commission on December 27, 2002, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of New Holland North America, Inc. of New Holland, Pennsylvania. The complaint alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain tractors and components thereof by reason of misappropriation of New Holland's trade dress. Supplements to the complaint were filed on January 15 and 16, 2003. The complaint further alleges injury to an industry in the United States as required by subsection (a)(1)(A) of section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue a permanent exclusion order and permanent cease and desist orders.

The motion for temporary relief requests that the Commission issue a temporary limited exclusion order and temporary cease and desist orders prohibiting the importation into and the sale within the United States after importation of certain tractors and components thereof that misappropriate New Holland's trade dress during the course of the Commission's investigation.

ADDRESSES: The complaint and motion for temporary relief, except for any confidential information contained therein, are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone (202) 205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS–ON–LINE) at *http://dockets.usitc.gov/eol/public.*

FOR FURTHER INFORMATION CONTACT: David H. Hollander, Jr., Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2746.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2002). The authority for provisional acceptance of the motion for temporary relief is contained in section 210.58, 19 CFR 210.58.

Scope of Investigation: Having considered the complaint and the motion for temporary relief, the U.S. International Trade Commission, on February 3, 2003, Ordered that—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(A) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain agricultural tractors, lawn tractors, riding lawnmowers, or components thereof by reason of misappropriation of trade dress, the threat or effect of which is to destroy or substantially injure an industry in the United States.

(2) Pursuant to section 210.58 of the Commission's Rules of Practice and Procedure, 19 CFR 210.58, the motion for temporary relief under subsection (e) of section 337 of the Tariff Act of 1930, which was filed with the complaint, be provisionally accepted and referred to the presiding administrative law judge for investigation.

(3) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—New Holland North America, Inc., 500 Diller Avenue, New Holland, Pennsylvania 17557–9301.

(b) The respondents are the following companies alleged to be in violation of section 337, and are the parties upon which the complaint and the motion for temporary relief are to be served:

Beiqi Futian Automobile Co., Ltd., Shayang Road, Shake Town, Changping District, Beijing 102206, China.

Northwest Products, Inc., 3046 South Star Lake Road, Auburn, Washington 98001–1824.

Cove Equipment, Inc., 2685 Paces Landing Drive, Conyers, Georgia 30012.

(c) David H. Hollander, Jr., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Room 401–K, Washington, DC 20436, who shall be the Commission investigative attorney, party to this investigation; and

(4) For the investigation and temporary relief proceedings so instituted, the Honorable Sidney Harris is designated as the presiding administrative law judge.

Responses to the complaint, the motion for temporary relief, and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 and 210.59 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13 and 210.59. Pursuant to 19 CFR 201.16(d), 210.13(a), and 210.59, such responses will be considered by the Commission if received not later than 10 days after the date of service by the Commission of the complaint, the motion for temporary relief, and the notice of investigation. Extensions of time for submitting the responses to the complaint, motion for temporary relief, and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint, in the motion for temporary relief, and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint, the motion for temporary relief and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint, the motion for temporary relief, and this notice and to enter both an initial determination and a final determination containing such findings, and may result in the issuance of limited exclusion orders or cease and desist orders or both directed against such respondent.

Issued: February 4, 2003.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 03–3177 Filed 2–7–03; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Comment Request

Action: 60-day notice of information collection under review; affidavit of support under section 213A of the Act, and contract between sponsor and household member; forms I–864.

The Department of Justice, Immigration and Naturalization Service has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for 60 days until April 11, 2003.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Revision of a currently approved collection.

(2) *Title of the Form/Collection:* Affidavit of Support under Section 213A of the Act, Contract Between Sponsor and Household Member, EZ Affidavit of Support under Section 213A of the Act, and Intending Immigrant's Affidavit of Support Exemption.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–864, form I–641A, form I–864EZ and form I–864W. Office of Policy and Planning, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. The collection of information is mandated by law for a petitioning relative to submit an affidavit on their relative's behalf. The executed form creates a contract between the sponsor and any entity that provides means-tested public benefits.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 439,500 principal I–864 responses at 6 hours per response; 215,800 I–864A responses at 1.75 minutes per response; 100,000 I–864EZ responses at 2.5 hours per response, and 1,000 I–864W responses at 1 hour per response.

(6) *An estimate of the total public burden (in hours) associated with the collection(s):* 3,265,650 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Regulations and Forms Services Division, Immigration and Naturalization Service, U.S. Department of Justice, Room 4034, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the items(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Office, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Patrick Henry Building, 601 D Street, NW., Suite 1600, Washington, DC 20530.

Dated: February 4, 2003.

Richard A. Sloan,

Department Clearance Officer, Department of Justice, Immigration and Naturalization Service.

[FR Doc. 03–3120 Filed 2–7–03; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Comment Request

ACTION: 60-day notice of information collection under review; Historical

Records Services Request, forms G–1041 and G–1041A.

The Department of Justice, Immigration and Naturalization Service has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for 60 days until April 11, 2003.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* New information collections.

(2) *Title of the Form/Collection:* Genealogy Search Request and Genealogy Records Request.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Forms G–1041 and G–1041A. Historical Records Services Program, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals and households. This form facilitates rapid identification of a particular INS record desired under the Historical Records Services Program.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 10,000 G–1041 responses at 30 minutes (.50 hours) per response; and 6,000 G–1041A responses at 30 minutes (.50 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 8,000 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 4034, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, 1331 Pennsylvania Avenue, NW., Suite 1220, Washington, DC 20530.

Dated: February 4, 2003.

Richard A. Sloan,

Department Clearance Officer, Department of Justice, Immigration and Naturalization Service.

[FR Doc. 03–3121 Filed 2–7–03; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: 30-day notice of information collection under review: application for citizenship and issuance of certificate under section 322; form N–600K.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on May 2, 2002, at 67 FR 22111, allowing for a 30-day public comment period. No public comments were received during this comment period. The OMB approved this collection of information on August 23, 2002.

The INS has revised the collection as a result of the implementation of Public Law 107–273, 21st Century Department of Justice Appropriations Authorization Act, enacted November 2, 2002. One of the immigration related changes made by this legislation is the addition of U.S. citizen grandparents and U.S. citizen legal guardians as eligible to apply for naturalization on behalf of a child born and residing outside the United States pursuant to the section 322 of the Immigration and Nationality Act (INA). Under this amended provision, application by the U.S. citizen grandparent or U.S. citizen legal guardian can be made within five years of the death of a U.S. citizen parent of a child who could otherwise have been the beneficiary of an application pursuant to INA 322. The collection has been revised accordingly.

The purpose of this notice is to allow an additional 30 days for public comments on the revised form. Attached for your review and comment is the revised form. Comments are encouraged and will be accepted until March 12, 2003. This process is conducted in according with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, 725—17th Street, NW., Room 10235, Washington, DC 20530.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Revision of a currently approved information collection.

(2) *Title of the Form/Collection:* Application for Citizenship and Issuance of Certificate under Section 322.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form N–600K, Immigration Services Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or Households. This form provides an organized framework for establishing the authenticity of an applicant's eligibility and is essential for providing prompt, consistent and correct processing of such applications for citizenship under section 322 of the Act.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 1,500 responses at 1 hour and 35 minutes (1.583 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 2,374 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Regulations and Forms Services Division, Immigration and Naturalization Service, U.S. Department of Justice, 425 I Street, NW., Room 4034, Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Patrick Henry Building, 601 D Street, NW., Ste. 1600, Washington, DC 20530.

Dated: February 4, 2003.

Richard A. Sloan,

Department Clearance Officer, Department of Justice, Immigration and Naturalization Service.

[FR Doc. 03–3122 Filed 2–7–03; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6861]

State of Alaska Commercial Fisheries Entry Commission Permit #57729N, Naknek, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #57729N, Naknek, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–3188 Filed 2–7–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6862]

State of Alaska Commercial Fisheries Entry Commission Permit #57554C, Naknek, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #57554C, Naknek, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–3189 Filed 2–7–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6863]

State of Alaska Commercial Fisheries Entry Commission Permit #61224S, Naknek, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #61224S, Naknek, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–3190 Filed 2–7–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6865]

State of Alaska Commercial Fisheries Entry Commission Permit #55066S, Naknek, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement

Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #55066S, Naknek, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–3191 Filed 2–7–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6866]

State of Alaska Commercial Fisheries Entry Commission Permit #63111I, Naknek, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #63111I, Naknek, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–3192 Filed 2–7–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6868]

State of Alaska Commercial Fisheries Entry Commission Permit #65037W, Naknek, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #65037W, Naknek, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–3193 Filed 2–7–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6870]

State of Alaska Commercial Fisheries Entry Commission Permit #61342N, Naknek, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #61342N, Naknek, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–3194 Filed 2–7–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6871]

State of Alaska Commercial Fisheries Entry Commission Permit #64862Z, Naknek, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #64862Z, Naknek, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–3195 Filed 2–7–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6872]

State of Alaska Commercial Fisheries Entry Commission Permit #62002U, Naknek, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement

Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #62002U, Naknek, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–3196 Filed 2–7–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6898]

State of Alaska Commercial Fisheries Entry Commission Permit #55443G, Naknek, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #55443G, Naknek, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–3197 Filed 2–7–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6699]

State of Alaska Commercial Fisheries Entry Commission Permit #64185L, Dillingham, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #64185L, Dillingham, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 11th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–3198 Filed 2–7–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6700]

State of Alaska Commercial Fisheries Entry Commission Permit #64185L, Dillingham, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #64185L, Dillingham, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–3199 Filed 2–7–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6702]

State of Alaska Commercial Fisheries Entry Commission Permit #61305Z, Dillingham, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #61305Z, Dillingham, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–3200 Filed 2–7–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6701]

State of Alaska Commercial Fisheries Entry Commission Permit #65612Q, Dillingham, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement

Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #65612Q, Dillingham, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–3201 Filed 2–7–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6703]

State of Alaska Commercial Fisheries Entry Commission Permit #64808Q, Dillingham, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #64808Q, Dillingham, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–3202 Filed 2–7–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6853]

State of Alaska Commercial Fisheries Entry Commission Permit #59829U, Manokotak, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #59829U, Manokotak, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–3203 Filed 2–7–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6857]

State of Alaska Commercial Fisheries Entry Commission Permit #59986N, Manokotak, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #59986N, Manokotak, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–3204 Filed 2–7–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6858]

State of Alaska Commercial Fisheries Entry Commission Permit #55654N, Manokotak, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #55654N, Manokotak, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–3205 Filed 2–7–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6859]

State of Alaska Commercial Fisheries Entry Commission Permit #57411A, Manokotak, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement

Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #57411A, Manokotak, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–3206 Filed 2–7–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6860]

State of Alaska Commercial Fisheries Entry Commission Permit #63413S, Naknek, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #63413S, Naknek, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–3207 Filed 2–7–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6714]

State of Alaska Commercial Fisheries Entry Commission Permit #61264K, Dillingham, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #61264K, Dillingham, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–3208 Filed 2–7–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6715]

State of Alaska Commercial Fisheries Entry Commission Permit #56498G, Dillingham, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #56498G, Dillingham, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–3209 Filed 2–7–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6717]

State of Alaska Commercial Fisheries Entry Commission Permit #66951P, Dillingham, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #66951P, Dillingham, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–3210 Filed 2–7–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6718]

State of Alaska Commercial Fisheries Entry Commission Permit #56838E, Dillingham, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement

Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #56838E, Dillingham, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–3211 Filed 2–7–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6719]

State of Alaska Commercial Fisheries Entry Commission Permit #56728W, Dillingham, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #56728W, Dillingham, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–3212 Filed 2–7–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6721]

State of Alaska Commercial Fisheries Entry Commission Permit #64428C, Dillingham, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #64428C, Dillingham, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–3213 Filed 2–7–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6722]

State of Alaska Commercial Fisheries Entry Commission Permit #64887H, Dillingham, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #64887H, Dillingham, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–3214 Filed 2–7–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6723]

State of Alaska Commercial Fisheries Entry Commission Permit #61445Z, Dillingham, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #61445Z, Dillingham, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–3215 Filed 2–7–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6725]

State of Alaska Commercial Fisheries Entry Commission Permit #60635U, Dillingham, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement

Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #60635U, Dillingham, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–3216 Filed 2–7–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6727]

State of Alaska Commercial Fisheries Entry Commission Permit #61444H, Dillingham, AK; Notice of Termination of Investigation

Pursuant to title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), subchapter D, chapter 2, title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002, in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #61444H, Dillingham, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–3217 Filed 2–7–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6729]

State of Alaska Commercial Fisheries Entry Commission Permit #66925Q, Dillingham, AK; Notice of Termination of Investigation

Pursuant to title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), subchapter D, chapter 2, title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002, in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #66925Q, Dillingham, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–3218 Filed 2–7–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6930]

State of Alaska Commercial Fisheries Entry Commission Permit #56944P, New Stuyahok, AK; Notice of Termination of Investigation

Pursuant to title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), subchapter D, chapter 2, title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002, in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #56944P, New Stuyahok, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–3219 Filed 2–7–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6897]

State of Alaska Commercial Fisheries Entry Commission Permit #56939F, Naknek, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), subchapter D, chapter 2, title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002, in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #56939F, Naknek, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–3220 Filed 2–7–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6896]

State of Alaska Commercial Fisheries Entry Commission Permit #56058F, Naknek, AK; Notice of Termination of Investigation

Pursuant to title V of the North American Free Trade Agreement

Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), subchapter D, chapter 2, title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002, in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #56058F, Naknek, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–3221 Filed 2–7–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6736]

State of Alaska Commercial Fisheries Entry Commission Permit #61137K, Egegik, AK; Notice of Termination of Investigation

Pursuant to title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), subchapter D, chapter 2, title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002, in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #61137K, Egegik, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–3222 Filed 2–7–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6734]

State of Alaska Commercial Fisheries Entry Commission Permit #58718W, Egegik, AK; Notice of Termination of Investigation

Pursuant to title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA-TAA and in accordance with section 250(a), subchapter D, chapter 2, title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002, in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #58718W, Egegik, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–3223 Filed 2–7–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6733]

State of Alaska Commercial Fisheries Entry Commission Permit #59807O, Egegik, AK; Notice of Termination of Investigation

Pursuant to title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), subchapter D, chapter 2, title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002, in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #59807O, Egegik, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–3224 Filed 2–7–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6732]

State of Alaska Commercial Fisheries Entry Commission Permit #59340P, Egegik, AK; Notice of Termination of Investigation

Pursuant to title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), subchapter D, chapter 2, title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002, in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #59340P, Egegik, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–3225 Filed 2–7–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6731]

State of Alaska Commercial Fisheries Entry Commission Permit #56145N, Egegik, AK; Notice of Termination of Investigation

Pursuant to title V of the North American Free Trade Agreement

Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), subchapter D, chapter 2, title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002, in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #56145N, Egegik, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–3226 Filed 2–7–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6730]

State of Alaska Commercial Fisheries Entry Commission Permit #61321A, Dillingham, AK; Notice of Termination of Investigation

Pursuant to title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), subchapter D, chapter 2, title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002, in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #61321A, Dillingham, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–3227 Filed 2–7–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

Notice of Meeting

Notice is hereby given of the date and location of an informal meeting to discuss the proposed changes to the federal sector recordkeeping requirements from 29 CFR part 1960, subpart I, to portions of 29 CFR part 1904 regulations, by reference. The meeting will be held on February 25, 2003, starting at 9 a.m., in Room N–4437 B/C/D of the Department of Labor Frances Perkins Building, 200 Constitution Avenue, NW., Washington, DC 20210. The meeting will be open to the public. All persons wishing to attend this meeting must exhibit photo identification to security personnel.

Agenda items will include:

1. Reason for the proposed change.
2. Description of the change.
3. Impact of the change.
4. Implementation of the change.

Anyone wishing to make an oral presentation should notify the Office of Federal Agency Programs by the close of business February 20, 2003. The request should state the amount of time desired, the capacity in which the person will appear, and a brief outline of the content of the presentation. Persons who request the opportunity to speak may be allowed to speak as time permits. Individuals with disabilities who wish to attend the meeting should contact Tom Marple at the address indicated below, if special accommodations are needed.

For additional information, please contact Thomas K. Marple, Director, Office of Federal Agency Programs, U.S. Department of Labor, Occupational Safety and Health Administration, Room N–3622, 200 Constitution Avenue, NW., Washington, DC 20210, telephone number (202) 693–2122. An official record of the meeting will be available for public inspection at the Office of Federal Agency Programs.

Signed at Washington, DC, this 3rd day of February, 2003.

John L. Henshaw,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 03–3186 Filed 2–7–03; 8:45 am]

BILLING CODE 4510–26–M

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. *The title of the information collection:* 10 CFR part 140, ‘‘Financial Protection Requirements and Indemnity Agreements’’.
2. *Current OMB approval number:* 3150–0039.
3. *How often the collection is required:* As necessary in order for NRC to meet its responsibilities called for in Sections 170 and 193 of the Atomic Energy Act of 1954, as amended (the Act).
4. *Who is required or asked to report:* Licensees authorized to operate reactor facilities in accordance with 10 CFR part 50 and licensees authorized to construct and operate a uranium enrichment facility in accordance with 10 CFR parts 40 and 70.
5. *The number of annual respondents:* 91.
6. *The number of hours needed annually to complete the requirement or request:* 1,382.
7. *Abstract:* 10 CFR part 140 of the NRC's regulations specifies information required to be submitted by licensees to enable the NRC to assess (a) the financial protection required of licensees and for the indemnification and limitation of liability of certain licensees and other persons pursuant to section 170 of the Atomic Energy Act of 1954, as amended, and (b) the liability insurance required of uranium enrichment facility licensees pursuant to section 193 of the Atomic Energy Act of 1954, amended.

Submit, by April 11, 2003, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?
2. Is the burden estimate accurate?
3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F23, Rockville, MD 20852. OMB clearance requests are available at the NRC worldwide Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html*. The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Brenda Jo. Shelton, U.S. Nuclear Regulatory Commission, T–6 E6, Washington, DC 20555–0001, by telephone at (301) 415–7233, or by Internet electronic mail at *INFOCOLLECTS@NRC.GOV*.

Dated at Rockville, Maryland, this 3rd day of February 2003.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 03–3233 Filed 2–7–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–528, 50–529, AND 50–530]

Arizona Public Service Co.; Notice of Withdrawal of Application for Approval of Transfer of Facility Operating Licenses and Conforming Amendments

The U.S. Nuclear Regulatory Commission (the Commission) has permitted the withdrawal of the application dated April 15, 2002, as supplemented by letter dated July 11, 2002, filed by Arizona Public Service Company (APS) and Pinnacle West Energy Corporation (PWE), which had requested approval of the transfer of the Facility Operating License Nos. NPF–41, NPF–51, and NPF–74 for the Palo Verde Nuclear Generating Station (Palo Verde), Units 1, 2, and 3, to the extent held by APS, to PWE, in connection with a proposed restructuring of APS. The application also requested approval, pursuant to 10 CFR 50.90, of proposed conforming amendments. Palo Verde, Units 1, 2, and 3, are located in Maricopa County, Arizona.

The Commission had previously issued a Notice of Consideration of Approval of Transfer of Facility Operating Licenses and Conforming Amendments, and Opportunity for a Hearing, which was published in the **Federal Register** on July 29, 2002 (67 FR 49044). However, by letter dated December 23, 2002, APS and PWE withdrew the application.

For further details with respect to this action, see the application dated April 15, 2002, as supplemented by letter dated July 11, 2002, and the licensee's letter dated December 23, 2002, which withdrew the application. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams/html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, or (301) 415–4737 or by email to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 4th day of February 2003.

For the Nuclear Regulatory Commission

Jack Donohew,

Senior Project Manager, Section 2, Project Directorate IV, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 03–3232 Filed 2–7–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket 72–30]

Maine Yankee Atomic Power Company, Independent Spent Fuel Storage Installation; Issuance of Environmental Assessment and Finding of No Significant Impact for a Proposed Exemption

The U.S. Nuclear Regulatory Commission (NRC or Commission) is considering issuance of an exemption to Maine Yankee Atomic Power Company (MYAPC or licensee), pursuant to 10 CFR 72.7, from specific provisions of 10 CFR 72.212(a)(2), 72.212(b)(2)(i), 72.212(b)(7), and 72.214. The licensee is planning to use the NAC–UMS Storage System to store spent nuclear fuel from the decommissioning reactor. The requested exemption would allow MYAPC to deviate from requirements of the NAC–UMS Certificate of Compliance #1015 (CoC or Certificate), Appendix A, Limiting Condition for Operation (LCO) Items 3.1.1.1, 3.1.1.2, 3.1.4.1, and 3.1.4.2. Specifically, the exemption would allow MYAPC to increase: (1) Vacuum drying time limits based on canister heat load; (2) vacuum drying time limits after 24 hours of in-pool or forced air cooling; (3) time duration limit from completion of canister helium backfill through completion of canister transfer to the concrete cask; and (4) time duration limit from completion of in-pool or forced air cooling through completion of the canister transfer to the concrete cask.

By letter dated January 15, 2002, the designer of the NAC-UMS system, NAC International, requested an amendment to CoC #1015, that seeks, among several other changes, to increase the vacuum drying time limits. That request was supplemented on November 27, 2002. The information provided in the amendment request, as supplemented, is relevant to the exemption request by MYAPC and provides the safety basis for the time limits increase.

Environmental Assessment (EA)

Identification of Proposed Action

By letter dated November 7, 2002, as supplemented on December 19, 2002, MYAPC requested an exemption from the requirements of 10 CFR 72.212(a)(2), 72.212(b)(2)(i), 72.212(b)(7), and 10 CFR 72.214 to deviate from the requirements in CoC No. 1015, Appendix A, LCO Items 3.1.1.1, 3.1.1.2, 3.1.4.1, and 3.1.4.2. MYAPC has informed the NRC of its plans to store spent nuclear fuel under the general licensing provisions of 10 CFR part 72. The licensee has begun loading spent fuel into the NAC-UMS Storage System at an Independent Spent Fuel Storage Installation (ISFSI) located at the Maine Yankee Atomic Power Station in Wiscasset, Maine.

The current requirements in CoC No. 1015, Appendix A, LCO Items 3.1.1.1, 3.1.1.2, 3.1.4.1, and 3.1.4.2 establish time limits for vacuum drying operations as follows:

(1) LCO 3.1.1.1 limits the vacuum drying time for the fuel canister based on heat load per canister to the following:

(a) 34 hours for heat loads less than or equal to 8 kilowatts (kW).

(b) 30 hours for heat loads greater than 8 kW and less than or equal to 11 kW.

(c) 23 hours for heat loads greater than 11 kW and less than or equal to 14 kW.

(d) 19 hours for heat loads greater than 14 kW and less than or equal to 17.6 kW.

(2) LCO 3.1.1.2 limits canister vacuum drying time after the end of 24 hours of in-pool or of forced air cooling to the following:

(a) 14 hours for heat loads less than or equal to 14 kW.

(b) 10 hours for heat loads greater than 14 kW and less than or equal to 20 kW.

(3) LCO 3.1.4.1 limits the time duration from completion of backfilling the canister with helium through completion of canister transfer to the concrete cask to 48 hours for canister heat loads greater than 14 kW and less than or equal to 17.6 kW.

(4) LCO 3.1.4.2 limits the time duration from completion of in-pool or forced air cooling through completion of canister transfer to the concrete cask to 20 hours for canister heat loads greater than 14 kW and less than or equal to 17.6 kW.

By exempting MYAPC from 10 CFR 72.212(a)(2), 72.212(b)(2)(i), 72.212(b)(7), and 10 CFR 72.214 for this request, MYAPC will be authorized to change the above mentioned time limits as follows:

(1) For LCO 3.1.1.1, the time limits per canister will be increased as follows:

(a) 103 hours for heat loads less than or equal to 8 kW.

(b) 52 hours for heat loads greater than 8 kW and less than or equal to 11 kW.

(c) 40 hours for heat loads greater than 11 kW and less than or equal to 14 kW.

(d) 33 hours for heat loads greater than 14 kW and less than or equal to 17.6 kW.

(2) For LCO 3.1.1.2, the time limits per canister will be increased as follows:

(a) 78 hours for heat loads less than or equal to 8 kW.

(b) 27 hours for heat loads greater than 8 kW and less than or equal to 11 kW.

(c) 16 hours for heat loads greater than 11 kW and less than or equal to 14 kW.

(d) 9 hours for heat loads greater than 14 kW and less than or equal to 17.6 kW.

(3) For LCO 3.1.4.1, the time limit for canister heat loads less than or equal to 17.6 kW, will be increased to 600 hours.

(4) For LCO 3.1.4.2, the time limit for canister heat loads less than or equal to 17.6 kW, will be increased to 600 hours.

The proposed action before the Commission is whether to grant this exemption under the provisions of 10 CFR 72.7. The NRC staff has reviewed the exemption request and determined that the increased LCO time limits for vacuum drying operations are consistent with the safety analyses previously reviewed for the NAC–UMS system, and would have no impact on the design basis and would not be inimical to public health and safety.

Need for the Proposed Action

At the time of the exemption request, MYAPC had loaded approximately seven casks. During these cask loadings, MYAPC discovered that the existing NAC–UMS Technical Specification (TS) limits for vacuum drying and subsequent cool down required the licensee to repeatedly enter into the required actions of the TS. Since successful vacuum drying could not be accomplished within the TS limits, MYAPC was required to take the LCO remedial actions. Specifically, the licensee was required to perform in-pool or forced-air cooling of the canister for a 24 hour period if the canister could not be vacuum dried within the prescribed times. The TS further limits subsequent drying times after this cool-down period.

Consequently, the licensee found it difficult to achieve sufficient vacuum drying on the second drying attempt, thus requiring another cool-down period. The repeated entries into vacuum drying and cool-down periods added to the processing time and to the occupational exposures. The licensee estimated that processing times for each canister was increased by a minimum of 60 hours.

The licensee calculated that the reduction in radiological exposure to the operators, fuel handlers, and security personnel involved in handling, preparing and transferring the canisters would be approximately 5 rem during the remainder of the spent fuel loading campaign. This reduction is a significant percentage of the overall station dose for the entire decommissioning project. The expected savings of 5 rem represents nearly 8% of the 2002 total station dose and will likely represent an even greater percentage of the 2003 station dose.

Environmental Impacts of the Proposed Action

The licensee requested the exemption to increase current vacuum drying time limits specified in CoC No. 1015. The NRC staff performed a safety evaluation of the proposed exemption. Staff reviewed the analysis provided in the NAC–UMS amendment application addressing spent fuel cladding integrity and thermal performance of canisters for increased vacuum drying times. The safety evaluation performed by the staff concludes that the NRC has reasonable assurance that increasing the vacuum drying time limits has no impact on off-site doses, results in a dose savings to workers, and meets the requirements of 10 CFR 72.104, 10 CFR 72.106 and 10 CFR 20.1301, and is therefore acceptable.

Therefore, the environmental impact of increasing vacuum drying time limits is no greater than the environmental impact already assessed in the initial rulemaking for the NAC–UMS storage system (65 FR 62581, dated October 19, 2000).

The proposed action will not increase the probability or consequences of the analyzed accidents, no changes are being made to the types of effluents that may be released offsite, and there is no increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action. Therefore, the staff has determined that there is no reduction in the ability of the NAC–UMS system to perform its safety function, nor significant environmental impacts, as a result of increasing vacuum drying time limits.

Alternative to the Proposed Action

Since there is no significant environment impact associated with the proposed action, alternatives with equal or greater environmental impact are not evaluated. The alternative to the proposed action would be to deny approval of the exemption. Denial of the exemption request will have the same environmental impact, but would likely result in a dose increase to workers involved in cask loading activities.

Agencies and Persons Consulted

This exemption request was discussed with Ms. Paula Craighead, State Nuclear Safety Advisor for the State of Maine, on January 28, 2003. Ms. Craighead sent an e-mail to NRC on January 31, 2003, identifying the State's concerns with the exemption request. The safety concerns raised by Ms. Craighead were addressed by NRC staff in the evaluation of the exemption request and did not provide a basis to deny the exemption request.

Finding of No Significant Impact

The environmental impacts of the proposed action have been reviewed in accordance with the requirements set forth in 10 CFR part 51. Based upon the foregoing EA, the Commission finds that the proposed action of granting the exemption from 10 CFR 72.212(a)(2), 72.212(b)(2)(i), 72.212 (b)(7), and 10 CFR 72.214 and allowing MYAPC to increase the vacuum drying time limits for loading spent fuel in the NAC–UMS storage system will not significantly impact the quality of the human environment. Accordingly, the Commission has determined that an environmental impact statement for the proposed exemption is not warranted.

The request for exemption was docketed under 10 CFR Part 72, Docket 72–30. For further details with respect to this action, see the exemption request dated November 7, 2002. The NRC maintains an Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. These documents may be accessed through the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/reading-rm/adams.html*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 31st day of January, 2003.

For the Nuclear Regulatory Commission.

Stephen C. O'Connor,

Sr. Project Manager, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 03–3234 Filed 2–7–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–8968–ML–REN, ASLBP No. 03–809–01–ML–REN]

Hydro Resources, Inc.; Designation of Presiding Officer

Pursuant to delegation by the Commission, *see* 37 FR 28,710 (Dec. 29, 1972), and the Commission's regulations, *see* 10 CFR 2.1201, 2.1207, notice is hereby given that (1) a single member of the Atomic Safety and Licensing Board Panel is designated as Presiding Officer to rule on petitions for leave to intervene and/or requests for hearing; and (2) upon making the requisite findings in accordance with 10 CFR 2.1205(h), the Presiding Officer will conduct an adjudicatory hearing in the following proceeding: Hydro Resources, Inc., Crownpoint Uranium Project, Crownpoint, New Mexico, (Materials License Renewal).

The hearing will be conducted pursuant to 10 CFR part 2, subpart L, of the Commission's Regulations, ''Informal Hearing Procedures for Adjudications in Materials and Operator Licensing Proceedings.'' This proceeding concerns a request for hearing and petition for leave to intervene submitted by Bonnie Benally Yazzie on January 14, 2003, in response to a notice of timely receipt and consideration of an application of Hydro Resources, Inc., for renewal of its 10 CFR part 40 source materials license for uranium production at the Crownpoint Uranium Project, Crownpoint, New Mexico. The notice of opportunity to provide comments and to request a hearing was published in the **Federal Register** on December 16, 2002 (67 FR 77,084).

The Presiding Officer in this proceeding is Administrative Judge Thomas S. Moore. Pursuant to the provisions of 10 CFR 2.722, 2.1209, Administrative Judge Thomas D. Murphy has been appointed to assist the Presiding Officer in taking evidence and in preparing a suitable record for review.

All correspondence, documents, and other materials shall be filed with Judges Moore and Murphy in accordance with 10 CFR 2.1203. Their addresses are:

Thomas S. Moore, Administrative Judge, Presiding Officer, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Thomas D. Murphy, Administrative Judge, Special Assistant, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Issued at Rockville, Maryland, this 4th day of February 2003.

G. Paul Bollwerk, III,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 03–3231 Filed 2–7–03; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 25924; 812–12886]

Van Kampen Investment Advisory Corp., et al.; Notice of Application

February 3, 2003.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application under section 6(c) of the Investment Company Act of 1940 (the ''Act'') for an exemption from sections 18(c) and 18(i) of the Act, under sections 6(c) and 23(c)(3) of the Act for an exemption from rule 23c–3 under the Act, and pursuant to section 17(d) of the Act and rule 17d–1 under the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit certain registered closed-end management companies to issue multiple classes of shares and to impose asset-based distribution fees and early withdrawal charges.

APPLICANTS: Van Kampen Prime Rate Income Trust (''Prime Rate'') and Van Kampen Senior Floating Rate Fund (''Senior Floating Rate'') (each a ''Fund'' and collectively, the ''Funds''), Van Kampen Investment Advisory Corp. (''Adviser''), Van Kampen Funds Inc. (''Distributor'') and Van Kampen Investments Inc. (''Van Kampen Investments'').

FILING DATES: The application was filed on September 25, 2002 and amended on January 31, 2003.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on February 28, 2003, and should be accompanied by proof of service on the applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW., Washington, DC 20549–0609; Applicants, c/o A. Thomas Smith III, Van Kampen Investments Inc., 1 Parkview Plaza, Oakbrook Terrace, IL 60181–5555.

FOR FURTHER INFORMATION CONTACT: Jean E. Minarick, Senior Counsel, at (202) 942–0527 or Nadya B. Roytblat, Assistant Director, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (telephone (202) 942–8090).

Applicants' Representations

1. The Funds are closed-end management investment companies registered under the Act and organized as Massachusetts business trusts. The Adviser is registered as an investment adviser under the Investment Advisers Act of 1940 and serves as investment adviser to the Funds. The Distributor, a

broker-dealer registered under the Securities Exchange Act of 1934 (''1934 Act''), distributes each Fund's shares. The Adviser and the Distributor are both wholly-owned subsidiaries of Van Kampen Investments. The Distributor and Van Kampen Investments act as administrator to Prime Rate and Senior Floating Rate, respectively. Van Kampen Investments is an indirect, wholly-owned subsidiary of Morgan Stanley.

2. Applicants request that the order also apply to any other registered closed-end management investment company that may be organized in the future for which the Adviser, the Distributor or Van Kampen Investments or any entity controlling, controlled by, or under common control with the Adviser, the Distributor or Van Kampen Investments acts as investment adviser, principal underwriter or administrator and which provides periodic liquidity with respect to its shares pursuant to rule 13e–4 under the 1934 Act or operates as an interval fund pursuant to rule 23c–3 under the Act.[1]

3. The investment objective of each of the Funds is to provide a high level of current income, consistent with the preservation of capital. The Funds invest primarily in adjustable rate senior loans. In normal market conditions, each Fund plans to invest at least 80% of its total assets in adjustable senior rate loans. Each Fund may also invest up to 20% of its total assets in any combination of the following: (a) warrants, equity securities and junior debt securities, in each case that are acquired in connection with the acquisition, restructuring or disposition of a senior loan, and (b) high quality short-term debt securities.

4. The Funds continuously offer their shares to the public at net asset value. Shares of Prime Rate and shares of Senior Floating Rate are currently sold without a front-end sales charge, although they are subject to early withdrawal charges (''EWCs'') payable to the Distributor if the shareholder redeems his or her shares during the first five years or first year, respectively, after purchasing the shares. The Funds' shares are not offered or traded in the secondary market and are not listed on any exchange or quoted on any quotation medium. The Funds consider each quarter to offer to repurchase a portion of their outstanding shares at their then current net asset value pursuant to rule 13e–4 under the 1934 Act. The Funds may in the future operate as ''interval funds'' pursuant to rule 23c–3 under the Act and make periodic repurchase offers to their shareholders.

5. The Funds seek the flexibility to be structured as multiple class funds and currently intend to offer three different classes of shares. The Funds may offer shares at net asset value, plus a front-end sales charge (''Class A Shares''). The Funds may issue shares similar to certain classes of shares issued by other funds in the Van Kampen group of investment companies in that such shares are offered at net asset value with no front-end sales charge and are subject to a deferred sales charge. Prime Rate currently offers shares at net asset value without a sales charge, but subject to an EWC on shares that are repurchased by Prime Rate within five years of the date of purchase (''Class B Shares''). Senior Floating Rate currently offers shares at net asset value without a sales charge, but subject to an EWC on shares that are repurchased within one year of the date of purchase and an annual asset-based service fee of up to 0.25% of average daily net assets (''Class C Shares''). Prime Rate may add a class of shares, designated as Class C Shares, similar to the Class C Shares of Senior Floating Rate, and Senior Floating Rate may add a class of shares, designated as Class B Shares, similar to Class B Shares of Prime Rate. The Funds' shares may become subject to an annual asset-based distribution fee of up to 0.75% of average daily net assets, as well as to an annual asset-based service fee of up to 0.25% of average daily net assets. The Funds may in the future offer additional classes of shares with a front-end sales charge, an EWC and/or asset-based service or distribution fees.

6. Applicants represent that any asset-based service and distribution fees will comply with the provisions of rule 2830(d) of the Conduct Rules of the National Association of Securities Dealers, Inc. (''NASD Sales Charge Rule''). Applicants also represent that each Fund will disclose in its prospectus, the fees, expenses and other characteristics of each class of shares offered for sale by the prospectus, as is required for open-end multiple class funds under Form N–1A.

7. Each Fund will allocate all expenses incurred by it among the various classes of shares based on the net assets of the Fund attributable to each class, except that the net asset value and expenses of each class will reflect distribution fees, service fees, and any other incremental expenses of that class. Expenses of a Fund allocated to a particular class of shares will be borne on a *pro rata* basis by each outstanding share of that class. Each Fund may create additional classes of shares in the future that may have different terms from Class B and Class C shares. Applicants state that each Fund will comply with the provisions of rule 18f–3 under the Act as if it were an open-end investment company.

8. Each Fund may waive the EWC for certain categories of shareholders or transactions to be established from time to time. With respect to any waiver of, scheduled variation in, or elimination of the EWC, each Fund will comply with rule 22d–1 under the Act as if the Fund were an open-end investment company.

9. Each Fund may offer its shareholders an exchange feature under which shareholders of the Fund may, during the Fund's periodic repurchase periods, exchange their shares for shares of the same class of other registered open-end investment companies or registered closed-end investment companies in the Van Kampen group of investment companies. If either Fund operates pursuant to rule 23c–3, Fund shares so exchanged will count as part of the repurchase offer amount as specified in rule 23c–3 under the Act. Any exchange option will comply with rule 11a–3 under the Act as if the Fund were an open-end investment company subject to that rule. In complying with rule 11a–3, each Fund will treat the EWCs as if they were a contingent deferred sales charge (''CDSC'').

Applicants' Legal Analysis

Multiple Classes of Shares

1. Section 18(c) of the Act provides, in relevant part, that a closed-end investment company may not issue or sell any senior security if, immediately thereafter, the company has outstanding more than one class of senior security. Applicants state that the creation of multiple classes of shares of the Funds may be prohibited by section 18(c).

2. Section 18(i) of the Act provides that each share of stock issued by a registered management investment company will be a voting stock and have equal voting rights with every other outstanding voting stock. Applicants state that multiple classes of shares of the Funds may violate section 18(i) of the Act because each class would be entitled to exclusive voting rights with respect to matters solely related to that class.

3. Section 6(c) of the Act provides that the Commission may exempt any person, security or transaction or any class or classes of persons, securities or transactions from any provision of the Act, or from any rule thereunder, if and

[1] Any registered closed-end management investment company relying on this relief in the future will do so in a manner consistent with the terms and conditions of the application. Applicants represent that each entity presently intending to rely on the requested relief is listed as an applicant.

to the extent such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants request an exemption under section 6(c) from sections 18(c) and 18(i) to permit the Funds to issue multiple classes of shares.

4. Applicants submit that the proposed allocation of expenses and voting rights among multiple classes of the Funds is equitable and will not discriminate against any group or class of shareholders. Applicants submit that the proposed arrangements would permit the Funds to facilitate the distribution of their securities and provide investors with a broader choice of shareholder services. Applicants assert that their proposal does not raise the concerns underlying section 18 of the Act to any greater degree than open-end investment companies' multiple class structures that are permitted by rule 18f–3 under the Act. Applicants state that each Fund will comply with the provisions of rule 18f–3 as if it were an open-end investment company.

Early Withdrawal Charges

1. Section 23(c) of the Act provides, in relevant part, that no registered closed-end investment company will purchase securities of which it is the issuer, except: (a) On a securities exchange or other open market; (b) pursuant to tenders, after reasonable opportunity to submit tenders given to all holders of securities of the class to be purchased; or (c) under other circumstances as the Commission may permit by rules and regulations or orders for the protection of investors.

2. Rule 23c–3 under the Act permits a registered closed-end investment company (an ''interval fund'') to make repurchase offers of between five and twenty-five percent of its outstanding shares at net asset value at periodic intervals pursuant to a fundamental policy of the interval fund. Rule 23c–3(b)(1) under the Act provides that an interval fund may deduct from repurchase proceeds only a repurchase fee, not to exceed two percent of the proceeds, that is reasonably intended to compensate the fund for expenses directly related to the repurchase.

3. Section 23(c)(3) provides that the Commission may issue an order that would permit a closed-end investment company to repurchase its shares in circumstances in which the repurchase is made in a manner or on a basis that does not unfairly discriminate against any holders of the class or classes of securities to be purchased. As noted above, section 6(c) provides that the Commission may exempt any person, security or transaction from any provision of the Act, if and to the extent that the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Because the Funds may operate in the future pursuant to rule 23c–3 under the Act, Applicants request relief under sections 6(c) and 23(c) from rule 23c–3 to permit them to impose EWCs on shares of the Funds submitted for repurchase that have been held for less than a specified period.

4. Applicants believe that the requested relief meets the standards of sections 6(c) and 23(c)(3). Rule 6c–10 under the Act permits open-end investment companies to impose CDSCs, subject to certain conditions. Applicants state that EWCs are functionally similar to CDSCs imposed by open-end investment companies under rule 6c–10. Applicants state that EWCs may be necessary for the Distributor to recover distribution costs. Applicants will comply with rule 6c–10 as if that rule applied to closed-end investment companies. The Funds also will disclose EWCs in accordance with the requirements of Form N–1A concerning CDSCs. Applicants further state that the Funds will apply the EWC (and any waivers or scheduled variations of the EWC) uniformly to all shareholders in a given class and consistently with the requirements of rule 22d–1 under the Act.

Asset-Based Distribution Fees

1. Section 17(d) of the Act and rule 17d–1 under the Act prohibit an affiliated person of a registered investment company or an affiliated person of such person, acting as principal, from participating in or effecting any transaction in connection with any joint enterprise or joint arrangement in which the investment company participates unless the Commission issues an order permitting the transaction. In reviewing applications submitted under section 17(d) and rule 17d–1, the Commission considers whether the participation of the investment company in a joint enterprise or joint arrangement is consistent with the provisions, policies and purposes of the Act, and the extent to which the participation is on a basis different from or less advantageous than that of other participants.

2. Rule 17d–3 under the Act provides an exemption from section 17(d) and rule 17d–1 to permit open-end investment companies to enter into distribution arrangements pursuant to rule 12b–1 under the Act. Applicants request an order under section 17(d) and rule 17d–1 under the Act to permit the Funds to impose asset-based distribution fees. Applicants have agreed to comply with rules 12b–1 and 17d–3 as if those rules applied to closed-end investment companies.

Applicants' Condition

Applicants agree that any order granting the requested relief will be subject to the following condition:

Applicants will comply with the provisions of rules 6c–10, 11a–3, 12b–1, 17d–3, 18f–3, and 22d–1 under the Act, as amended from time to time, as if those rules applied to closed-end management investment companies, and will comply with the NASD Sales Charge Rule, as amended from time to time.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–3118 Filed 2–7–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of February 10, 2003: Closed Meetings will be held on Tuesday, February 11, 2003 at 10 a.m., and on Thursday, February 13, 2003 at 10 a.m.

Commissioner Campos, as duty officer, determined that no earlier notice thereof was possible.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meetings. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), (9)(B) and (10) and 17 CFR 200.402(a)(3), (5), (7), (9)(ii) and (10), permit consideration of the scheduled matters at the Closed Meetings.

The subject matter of the Closed Meeting scheduled for Tuesday, February 11, 2003 will be:

Formal orders of investigation;

Institution and settlement of administrative proceedings of an enforcement nature;
Institution and settlement of injunctive actions; and an Opinion.

The subject matter of the Closed Meeting scheduled for Thursday, February 13, 2003 will be:

Institution and settlement of administrative proceedings of an enforcement nature; and
Institution and settlement of injunctive actions.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted, or postponed, please contact:

The Office of the Secretary at (202) 942–7070.

Dated: February 5, 2003.

Jonathan G. Katz,

Secretary.

[FR Doc. 03–3311 Filed 2–5–03; 4:18 pm]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

In the Matter of International Biochemical Industries, Inc.; Order of Suspension of Trading

February 6, 2003.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of International BioChemical Industries, Inc. (''IBCL'') because of questions regarding the accuracy of assertions by IBCL in press releases that indicated that the Federal government had contacted IBCL to discuss the effectiveness of the company's products in the war on bioterrorism.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed company.

Therefore, it is ordered, pursuant to section 12(k) of the Securities Exchange Act of 1934, that trading in the above-listed company is suspended for the period from 9:30 a.m. e.s.t. on February 6, 2003, through 11:59 p.m. e.s.t. on February 20, 2003.

By the Commission.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 03–3382 Filed 2–6–03; 2:30 pm]

BILLING CODE 8010–01–P

SMALL BUSINESS ADMINISTRATION

Federal Assistance Grant for Women's Business Centers To Provide Financial Counseling and Other Technical Assistance to Women

AGENCY: Small Business Administration.

ACTION: Program Announcement No. OWBO–2003–019.

SUMMARY: The U.S. Small Business Administration (SBA) plans to issue program announcement No. OWBO–2003–019 to invite applications from eligible nonprofit organizations to conduct Women's Business Center (WBC) projects. The successful applicant will receive a cooperative agreement to provide counseling, training and other technical assistance to women who want to start or expand businesses. The authorizing legislation is the the Small Business Act, sections 2(h) and 29, 15 U.S.C. 631(h) and 656.

A Women's Business Center is a 5-year community-based project that is funded by the SBA through a grant that requires matching funds. The project is a planned scope of activities that provide business skills services targeted to women. The project must operate as a distinct unit of the recipient's organization having its own budget for facilities, equipment and resources to carry out project activities. The WBC services must include long-term training and counseling pertaining to financial, management and marketing assistance to benefit small business concerns owned and controlled by women. SBA Headquarters must receive applications/proposals by 4 p.m., Eastern Standard Time, on the closing date of March 26, 2003. SBA will select successful applicants using a competitive technical evaluation process. Applicants from states and territories without an SBA-funded Women's Business Center (*i.e.*, Delaware and Guam) will receive special consideration.

Service and assistance areas must include financial, management, marketing, loan assistance, eCommerce, government procurement/certification assistance and training on the business uses of the Internet. Applicants must plan to include women who are socially and economically disadvantaged in the target group. The applicant may propose specialized services that will assist women in Empowerment Zones, agribusiness, rural or urban areas, etc. The applicant may propose to serve women who are veterans, women with home-based businesses, women with disabilities, etc. SBA will request award recipients to provide content and support activities to the SBA Online Women's Business Center, *www.onlinewbc.gov*.

The applicants' technical proposal must contain information about its current status and past performance. Also, the applicant must provide a 5-year plan for service delivery, fund-raising, training and technical assistance activities. The grant will be issued annually through a 5-year term without re-competition. The non-Federal match requirement is one non-Federal dollar for each two Federal dollars in years 1 and 2; and one non-Federal dollar for each Federal dollar in years 3, 4, and 5. Up to one-half of the non-Federal match funds may be in the form of in-kind contributions (*i.e.*, 50% of match must be in cash).

DATES: The opening date of the application period February 19, 2003 and the closing date is March 26, 2003.

FOR FURTHER INFORMATION CONTACT: Interested parties may access Program Announcement No. OWBO–2003–019 and application materials on the application opening date of February 19, 2003 at *http://WWW.onlinewbc.gov/grant.html.* If necessary, contact Sally Murrell WBC Program Manager at (202) 205–6673 or Mina Bookhard, Grant Officer at (202) 205–7080.

Wilma Goldstein,

Assistant Administrator, SBA /Office of Women's Business Ownership.

[FR Doc. 03–3135 Filed 2–7–03; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of intent to rule on Request To Release Airport Property at the City-County Airport, Madras, OR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Request to Release Airport Property.

SUMMARY: The FAA proposes to rule and invite public comment on the release of land at City-County Airport under the provisions of Section 125 of the Wendell H. Ford Aviation Investment Reform Act for the 21st Century (AIR 21), now 49 U.S.C. 47107(h)(2).

DATES: Comments must be received on or before March 12, 2003.

ADDRESSES: Comments on this application may be mailed or delivered to the FAA at the following address: Mr. J. Wade Bryant, Manager, Federal Aviation Administration, Northwest Mountain Region, Airports Division, Seattle Airports District Office, 1601

Lind Avenue, SW., Suite 250, Renton, Washington 98055–4056.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Mike Ahern, County Commission Chair or The Honorable Rick Allen, Mayor of City of Madras, at the following address: Mr. Mike Ahern, Jefferson County Commission Chair, Jefferson County Board of Commissioners, 66 SE D Street, Suite A, Madras, OR 97741, The Honorable Rick Allen, Mayor, City of Madras, 71 SE D Street, Madras, OR 97741.

FOR FURTHER INFORMATION CONTACT: Mr. William L. Watson, OR/ID Section Supervisor, Federal Aviation Administration, Northwest Mountain Region, Seattle Airports District Office, 1601 Lind Avenue, SW., Suite 250, Renton, Washington 98055–4056.

The request to release property may be reviewed, by appointment, in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA invites public comment on the request to release property at the City-County International Airport under the provisions of the AIR 21 (49 U.S.C. 47107(h)(2)).

On January 22, 2003, the FAA determined that the request to release property at City-County Airport submitted by the airport meets the procedural requirements of the Federal Aviation Administration. The FAA may approve the request, in whole or in part, no later than March 12, 2003.

The following is a brief overview of the request:

City-County Airport is proposing the release of approximately 20 acres of airport property so the property can be sold to the county for use as a jail site (site currently houses county jail on land leased from the airport). The revenue made from this sale will be used toward Airport Capital Improvement.

Any person may inspect, by appointment, the request in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**.

In addition, any person may, upon appointment and request, inspect the application, notice and other documents germane to the application in person at City-County Airport.

Issued in Renton, Washington on January 22, 2003.

J. Wade Bryant,

Manager, Seattle Airports District Office.

[FR Doc. 03–3271 Filed 2–7–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of intent to rule on application 03–04–C–00–AZO To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Kalamazoo/Battle Creek International Airport, Kalamazoo, MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Intent to Rule on Application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Kalamazoo/Battle Creek International Airport under the provisions of the 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before March 12, 2003.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Detroit Airports District Office, Willow Run Airport, East, 8820 Beck Road Belleville, Michigan 48111. The application may be reviewed in person at this location.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Lorence Wenke, Chairman, County of Kalamazoo at the following address: Kalamazoo/Battle Creek International Airport, 5235 Portage Road, Kalamazoo, Michigan, 49002.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the County of Kalamazoo under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Ms. Arlene B. Draper, Program Manager, Federal Aviation Administration, Detroit Airports District Office, Willow Run Airport, East, 8820 Beck Road, Belleville, Michigan 48111 (734–487–7282). The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Kalamazoo/Battle Creek International Airport under the provisions of the 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On January 10, 2003, the FAA determined that the application to impose and use the revenue from a PFC submitted by the County of Kalamazoo was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, not later than May 10, 2003.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00.

Proposed charge effective date. December 1, 2003.

Proposed charge expiration date: May 1, 2007.

Total estimated PFC revenue: $2,080,000.

Brief description of proposed projects: Terminal Design-Land Side: Terminal Design-Gates and Bag Claim; Terminal Design-Security Check Point; Terminal Design-Public Terminal Areas; PFC Financial Consulting Service-Phase 1. PFC Financial Consulting Service-Phase Class or classes of air carriers, which the public agency has requested to be required to collect PFCs: Non-scheduled Part 135 and air taxi operators.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the County of Kalamazoo.

Issued in Des Plaines, Illinois on January 21, 2003.

Mark McClardy,

Manager, Planning and Programming Branch, Airports Division, Great Lakes Region.

[FR Doc. 03–3272 Filed 2–7–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2003–14374]

Rotor Manufacturing Induced Anomaly Database

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed order designating voluntarily submitted information as protected from disclosure.

SUMMARY: The FAA proposes to designate the information and data submitted to them to create the Rotor Manufacturing Induced Anomaly Database (known as the ''ROMAN Database'') as protected from disclosure under 14 CFR part 193. This proposed designation would require the FAA to protect the information from disclosure under the Freedom of Information Act (5 U.S.C. 552) and other laws. The FAA wants to encourage production approval

holders and suppliers that manufacture high energy rotating gas turbine engine components to voluntarily submit information for inclusion into the ROMAN database.

DATES: Comments must be received on or before March 13, 2003.

ADDRESSES: Send or deliver all comments on the proposed Order to: Docket Management System (DMS), US Department of Transportation, Plaza Level Room 401, 400 Seventh Street, SW., Washington, DC 20590–0001.

FOR FURTHER INFORMATION CONTACT: Dan Kerman, Aviation Safety Inspector-Manufacturing Process Specialist, Manufacturing Inspection Office, ANE–180, Engine and Propeller Directorate, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, MA 01802, telephone 781–238–7195; fax (781) 238–7898.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to comment on the proposed Order listed in this notice by submitting such written data, views, or arguments as they desire to the Docket Management System (DMS), US Department of Transportation, Plaza Level Room 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You should submit two copies of your comments, identifying the docket number ''FAA–2003–14374'' at the beginning of your comments. If you wish to receive confirmation that your comments were received, include a stamped, self-addressed postcard with your comments. Comments may also be submitted through the DMS Internet address at *http://dms.dot.gov.*

Comments received on the proposed Order may be examined, before and after the comment closing date, in person, in the Docket Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office is on the Plaza Level of the NASSIF Building, Department of Transportation at the above address. Comments received may also be examined on the Internet at *http://dms.dot.gov.* The Associate Administrator for Regulation and Certification will consider all comments received on or before the closing date before issuing the final Order.

Background

Under 49 U.S.C. 40123, Congress authorized the FAA to establish rules that it could designate as protected from disclosure to the public certain voluntarily provided safety and security information. In so doing, Congress sought to encourage persons with knowledge of safety and security issues to voluntarily provide that information and data to the FAA. The aviation industry had expressed reluctance to voluntarily provide the FAA with safety and security information out of concern that the agency would be forced to make those submissions public in response to requests made under the Freedom of Information Act (FOIA) (5 U.S.C. 552) and other laws.

In 14 CFR part 193 (66 FR 33792, June 25, 2001) the FAA established the requirements for designating as protected from mandatory disclosure certain voluntarily submitted information. Before the information can be protected from disclosure however, the FAA must issue an order finding that the information meets the criteria established in 14 CFR part 193. Once the FAA issues an order designating information as protected under 14 CFR part 193, that information will not be disclosed in response to requests made under the FOIA or other laws except as provided for in 14 CFR 193.9. Thus, this proposed order is issued under the provisions of 14 CFR 193.11, which sets out the ''notice procedure'' for designating information as protected.

Description of the Information Sharing Program

The Aerospace Industries Association (AIA) established an international team of representatives from production approval holders (PAHs), and companies, that supply critical rotating parts to those PAHs to investigate the causal factors that have led to manufacturing induced anomalies in high energy rotating parts of commercial jet engines. The team's charter is to develop a database containing manufacturing induced anomalies in critical rotating parts for aircraft engines, including information on design data that could impact the life-limits of those parts.

Rotating parts, such as disks, in aircraft engines are exposed to extreme temperatures, pressures, and rotational forces. Under those conditions, any anomaly in the material matrix of the part could serve as a site for a crack to initiate. Rotating parts failures resulting from cracks originating from such anomalies have in the past caused aircraft accidents resulting in substantial damage and loss of life. With this database, the team's hopes are to outline recommendations for establishing best manufacturing practices for the fabrication of high-energy rotating engine components. This knowledge will also enable the entire engine industry to identify the precursors to unsafe conditions and to react appropriately in a safe and timely fashion. The report may also be used as a means of identifying shortfalls in existing FAA rules, standards, and policies regarding aircraft engine production and design approvals and for the continuing airworthiness oversight of engine designs currently in service.

The FAA supports this effort as part of the Safer Skies Program, and has agreed to serve as the clearinghouse for the database information submitted by PAHs and suppliers. If implemented, the ROMAN database would be created in a double blind format from data submitted by engine PAHs and suppliers consisting of a very sensitive and proprietary nature. PAHs and suppliers will not share this data with the FAA voluntarily, unless each submitter can do so anonymously, and has assurances that the data they submit would not be disclosed to the public, or to other submitters. With this data, it would be possible for the FAA to identify trends by analyzing adverse experiences on a fleet-wide basis. Such comparisons are not possible today because there are no participants willing to share such sensitive data with other members of industry, or the FAA, without assurances of protection from disclosure. However, the team members are willing to submit in a de-identified form, to allow the FAA and others on the team access to the data, only if the FAA provides assurances that the data will be protected from disclosure to the public. The proposed order protecting the submitted data under 14 CFR part 193 will provide those assurances. By compiling all submissions into a single database, each participant would benefit from defining best manufacturing practices, identifying adverse trends, and improved production efficiency. The flying public would benefit from improved reliability of aircraft engines and a reduction of the severity of the consequences of anomalies regarding integrity of the engine by, for example, the implementation of damage tolerance design methodologies.

The data will be submitted to the FAA anonymously by the participants. These submissions, initially, will include historical data from past years. In the future, the updating of the database will include only recently derived data. The FAA will secure a contractor that will input the data into a computerized database, and that database will be available for review by the participants and the FAA for establishing industry wide cause and corrective action. The computer database will be double blind and thus will not include the names of the participants. The FAA anticipates that in many cases the participants will use the information to identify and carry out improvements in their production and design techniques without the FAA requiring such action. When appropriate, the FAA will change its policies, standards, and rules to implement improvements based on this data.

Summary of the ROMAN Database Voluntary Information Sharing Program

(1) *Who would participate:* Production approval holders (PAHs) for aircraft engines and aircraft engine components, and suppliers of rotating parts to those PAHs who are members of the Rotor Manufacturing (ROMAN) team.

(2) *What voluntarily provided information would be protected from disclosure under this proposed designation:* Information on manufacturing-induced anomalies, including material attributes and debits, as well as root causes and corrective actions. This information would be provided for those manufacturing anomalies that would impact the integrity of critical rotating parts in aircraft engines.

(3) *How persons would participate:* Participation would be through the ROMAN team. Those manufacturers, PAHs, and suppliers of rotating parts will submit their information to a private contractor for inclusion into, and management of the ROMAN database.

(4) *Duration of this information sharing program:* This program would continue in effect until withdrawn by the FAA.

Proposed Findings Under 14 CFR Part 193

(1) *The information will be provided voluntarily.* The FAA finds that the information will be provided voluntarily, and any participant may withdraw from the program at any time. Note that the information provided by the participants is beyond the scope of that required by the type certification mandatory reporting rules, and that the participants may withdraw from the program at any time. The ROMAN database will provide PAHs and suppliers of critical rotating parts with an opportunity to benefit from each other's adverse experiences and lessons learned that is not available without the protection of 14 CFR part 193. The identification of trends and the establishment of the shortfalls with the base manufacturing processes as a result of the ROMAN database will provide economic benefit to the submitters.

(2) *The information is safety or security related.* The FAA finds that the information is safety related. The ROMAN database will contain comprehensive information on manufacturing-induced anomalies on critical rotating engine components. These anomalies are of the kind that has been known to initiate disk fracture and fatigue failure resulting in aircraft accidents. Also, important background information will be used to relate those anomalies to specific manufacturing methods and materials. The database will be instrumental in identifying manufacturing process and material shortfalls that will assist the industry and the FAA in improving the integrity and safety of rotating parts of jet engines.

(3) *The disclosure of the information would inhibit the voluntary provisions of that type of information.* The FAA finds that the disclosure of the information would inhibit persons from voluntarily providing of that type of information. The information submitted for the ROMAN database would be highly sensitive and commercially valuable information. One of the reasons why such a database does not already exist is the reluctance of each participant to share its data and lessons learned with the FAA as well as each other without the assurances of protection from public disclosure.

(4) *The receipt of this type of information aids in fulfilling the FAA's safety and security responsibilities.* The receipt of information for the ROMAN database will aid the FAA in improving overall engine rotor integrity and decreasing the occurrence and severity of engine rotor failures. Reducing the number of aircraft accidents attributable to the failure of rotating parts in engines is an important part of the FAA's Safer Skies Program. The ROMAN database provides a way to identify manufacturing tends and precursors before they result in anomalies that might cause rotating part failures and aircraft accidents.

(5) *Withholding such information from disclosure, under the circumstances provided in this part, is consistent with the FAA's safety and security responsibilities.* Withholding the information submitted to the FAA to form the ROMAN database from public disclosure is consistent with the FAA's safety responsibilities. The ROMAN database will provide a key method to improving safety in air commerce by identifying manufacturing trends that may contribute to the presence of anomalies in the rotating parts in aircraft engines that could potentially cause the part to fail. Identifying these trends will lead to improve manufacturing processes as well as design practices to eliminate and account for the anomalies in future production and the removal of parts already in service from the actual failure occurs.

The FAA will withhold and release information submitted under this program as specified in 14 CFR 193.9 and 193.11.

The FAA may release activity reports that include the number of PAHs and suppliers who are participating and the number of manufacturing trends identified as a result. Activity reports will not include the names of the PAH's and suppliers who participate, or numbers or details of the anomalies that have been disclosed under this program.

(6) *Summary of how the FAA will distinguish information protected under this program from information the FAA receives from other sources.* The FAA routinely receives data and information from aircraft engine PAHs as part of its regulatory oversight of approved engine designs. The data received from the ROMAN database will be maintained separately by having the ROMAN database managed by a contractor. The ROMAN database will include only information received under this program. Information that is received under this program, and reports generated from the ROMAN database, will be clearly marked as having been received under this program as follows:

''WARNING: The Information in this Document Is Protected from Disclosure under 14 CFR part 193. This Information May Not Be Released Except With Written Permission of the Associate Administrator for Regulation and Certification''

Proposed Designation

Accordingly, the Federal Aviation Administration hereby proposes to designate the information submitted under this program to be protected under 49 U.S.C. 40123 and 14 CFR part 193.

Authority: 49 U.S.C. 40123; and 14 CFR part 193.

Dated: Issued in Washington, DC, on February 4, 2003.

Nicholas A. Sabatini,

Associate Administrator for Regulation and Certification.

[FR Doc. 03–3274 Filed 2–7–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Policy Statement No. ANM–01–115–11; Certification of Strengthened Flight Deck Doors on Transport Category Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of final policy; request for comments.

SUMMARY: The Federal Aviation Administration (FAA) announces the availability of final policy concerning certification of strengthened flightdeck doors.

DATES: Send your comments on or before March 12, 2003.

ADDRESSES: Address your comments to the individual identified under **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: Jeff Gardlin, Federal Aviation Administration, Transport Airplane Directorate, Transport Standards Staff, Airframe/Cabin Safety Branch, ANM–115, 1601 Lind Avenue SW., Renton, WA 98055–4056; telephone (425) 227–2136; fax (425) 227–1320; e-mail: *jeff.gardlin@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The final policy is available on the Internet at the following address: *http://www.faa.gov/certification/aircraft/anminfo/finalpaper.cfm.* If you do not have access to the Internet, you can obtain a copy of the policy statement by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**.

The FAA invites your comments on this final policy. We will accept your comments, data, views, or arguments by letter, fax, or e-mail. Send your comments to the person indicated in **FOR FURTHER INFORMATION CONTACT.** Mark your comments, ''Comments to Policy Statement No. ANM–01–115–11.''

Use the following format when preparing your comments:

• Organize your comments issue-by-issue.

• For each issue, state what specific change you are requesting to the final policy.

• Include justification, reasons, or data for each change you are requesting.

We also welcome comments in support of the final policy.

We will consider all communications received on or before the closing date for comments. We may change the final policy because of the comments received.

Background

The final policy provides all transport airplane programs an acceptable method of compliance with 14 CFR part 25 for intrusion resistance and ballistic protection of flightdeck doors. The Frequently Asked Questions (FAQ) section has also been updated.

Issued in Renton, Washington, on January 21, 2003.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–3273 Filed 2–7–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Draft Environmental Impact Statement; Lewis & Clark and Jefferson Counties, MT.

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of availability.

SUMMARY: In compliance with the National Environmental Policy Act of 1969, the FHWA, in cooperation with the Montana Department of Transportation (MDT), has prepared a Draft Environmental Impact Statement (DEIS) for proposed transportation improvements along the I–15 Corridor in Helena, Lewis & Clark and Jefferson Counties, Montana. The Draft EIS identifies Build Alternatives with supporting elements and the No-Action Alternative, and their associated social, economic and environmental impacts. Interested citizens are invited to review the Draft EIS and submit comments. Copies of the Draft EIS may be obtained by telephoning or writing the contact person listed below under Addresses. Public reading copies of the Draft EIS are available at the locations listed under **SUPPLEMENTARY INFORMATION.**

DATES: A 45-calendar-day public review period will begin on February 14, 2003 and conclude on March 31, 2003. Written comments on the alternatives and impacts to be considered must be received by MDT by March 31, 2003. A public hearing to receive oral comments on the Draft EIS will be held at the West Coast Colonial Hotel, 2301 Colonial Drive, Helena, Montana, on March 11, 2003.

ADDRESSES: Written comments on the Draft EIS should be addressed to Mr. Mark Studt, P.E., Project Manager, Montana Department of Transportation, 2701 Prospect Avenue, Helena, MT 59601. Please see **SUPPLEMENTARY INFORMATION** section for a listing of the available documents and formats in which they may be obtained. Copies of the Draft EIS are also available for public inspection and review. See **SUPPLEMENTARY INFORMATION** section for locations.

FOR FURTHER INFORMATION CONTACT: To request copies of the Draft EIS or for additional information, contact Mr. Carl James, Transportation Specialist, FHWA Montana Division, 2880 Skyway Drive, Helena, MT, 59602, Telephone: (406) 449–5302, extension 238; or Mr. Mark Studt, Project Manager, Montana Department of Transportation, 2701 Prospect Avenue, Helena, MT 59601, Telephone: (406) 444–9191.

SUPPLEMENTARY INFORMATION: A Public Hearing will be held March 11, 2003, from 4:30 p.m. to 7:30 p.m. at the West Coast Colonial Hotel (address listed above).

Copies of the Draft EIS are available in hard copy format for public inspection at:

• Montana Department of Transportation, Environmental Services, 2701 Prospect Avenue, Room 111, Helena, MT 59601, 406–444–7228.

• Jefferson County, Clerk & Recorder's Office, Jefferson County Courthouse, Boulder, MT 59632, 406–225–4020.

• Lewis & Clark County, City and County Transportation Office, City and County Building, Room 404, 316 North Park, Helena, MT 59601, 406–447–8457.

• East Helena City Hall, City Clerk's Office, 7 E. Main St., East Helena, MT 59635, 406–227–5321.

• Lewis & Clark County Library, 120 S. Last Chance Gulch, Helena, MT 59601, 406–447–1690.

• Boulder Community Library, 202 South Main, Boulder, MT 59632, 406–225–3241.

• Broadwater Community Library, 201 North Spruce, Townsend, MT 59644, 406–266–5060.

• Clancy Library, 6 North Main, Clancy, MT 59634, 406–933–5254.

• Montana City Store, 1 Jackson Creek Road, Montana City, MT 59634, 406–442–6625.

• Carter & Burgess, Inc., 707 17th Street, Suite 2300, Denver, CO 80202, 303–820–4894.

Background

This Draft EIS provides a detailed evaluation of the proposed transportation improvements along I–15 between the Montana City interchange and the Lincoln Road interchange. The study area lies within Helena, Lewis & Clark and Jefferson Counties, MT. The study area extends approximately 19 kilometers (12 miles) from the Montana

City interchange in the south (RP 187) to the Lincoln Road interchange in the north (RP 200). This Draft EIS includes an examination of the purpose and need, alternatives under consideration, travel demand, affected environment, environmental consequences, and mitigation measures as a result of the improvements under consideration. Two build alternatives with five supporting elements and a No-Action Alternative are presented in the Draft EIS and are under consideration by FHWA and MDT.

The FHWA, MDT, and other local agencies invite interested individuals, organizations, and Federal, State, and local agencies to comment on the evaluated alternatives and associated social, economic, or environmental impacts related to the alternatives.

Issued on: February 4, 2003.

Dale W. Paulson,

Program Development Engineer, Montana Division, Federal Highway Administration, Helena, Montana.

[FR Doc. 03–3132 Filed 2–7–03; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: Maritime Administration, DOT.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and approval. The nature of the information collection is described as well as its expected burden. The **Federal Register** notice with a 60-day comment period soliciting comments on the following collection of information was published on November 5, 2002. No comments were received.

DATES: Comments must be submitted on or before March 12, 2003.

FOR FURTHER INFORMATION CONTACT: Rodney McFadden, Maritime Administration, 400 Seventh Street, SW., Washington, DC 20590. Telephone: 202–366–2647; FAX 202–493–2180, or e-mail: *rodney.mcfadden@marad.dot.gov*. Copies of this collection can also be obtained from that office.

SUPPLEMENTARY INFORMATION: Maritime Administration (MARAD).

Title: Information to Determine Seamen's Reemployment Rights.

OMB Control Number: 2133–0526.

Type of Request: Extension of currently approved collection.

Affected Public: U.S. merchant seamen who have completed designated national service during a time of maritime mobilization need and are seeking reemployment with a prior employer.

Form(s): None.

Abstract: MARAD is requesting approval of this collection in an effort to implement provisions of the Maritime Security Act of 1996. These provisions grant reemployment rights and other benefits to certain merchant seamen serving aboard vessels used by the United States during times of national emergencies. The Maritime Security Act of 1996 establishes the procedures for obtaining the necessary MARAD certification for reemployment rights and other benefits.

Annual Estimated Burden Hours: 50 hours.

Addresses: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention MARAD Desk Officer.

Comments are Invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

Issued in Washington, DC on February 4, 2003.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 03–3123 Filed 2–7–03; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Ex Parte No. 638]

Procedures To Expedite Resolution of Rail Rate Challenges To Be Considered Under the Stand-Alone Cost Methodology

AGENCY: Surface Transportation Board, DOT.

ACTION: Notice of public hearing.

SUMMARY: The Surface Transportation Board (Board) will hold a public hearing on Thursday, February 27, 2003, at its offices in Washington, DC, to provide interested persons an opportunity to express their views on the subject of expediting resolution of rail rate challenges to be considered under the Board's Stand-Alone Cost (SAC) methodology. Persons wishing to speak at the hearing should notify the Board in writing.

DATES: The public hearing will take place on Thursday, February 27, 2003. Any person wishing to speak at the hearing should file with the Board a written notice of intent to participate, and should indicate a requested time allotment, as soon as possible but no later than February 19, 2003. Each speaker should also file with the Board his/her written testimony by February 21, 2003.

ADDRESSES: An original and 10 copies of all notices of intent to participate and testimony should refer to STB Ex Parte No. 638, and should be sent to: Surface Transportation Board, Attn: STB Ex Parte No. 638, 1925 K Street, NW., Washington, DC 20423–0001.

FOR FURTHER INFORMATION, CONTACT: Jamie P. Rennert, (202) 565–1566. [Federal Information Relay Service (FIRS) (Hearing Impaired): (800) 877–8339.]

SUPPLEMENTARY INFORMATION: The Board will hold a public hearing to provide a forum for the expression of views by rail shippers, railroads, and other interested persons, on expediting resolution of rail rate challenges to be considered under the SAC methodology.

Issues. This public hearing follows the Board's review of comments filed in response to the notice of proposed rulemaking (NPRM) served in this docket on September 4, 2002. In the NPRM, the Board asked for suggestions on ways to streamline resolution of SAC cases, and the Board itself identified several possible measures. These measures included a mandatory pre-filing, non-binding mediation process; discovery standards tailored to the

Board's experience in SAC cases; and establishment of an informal expedited process, using Board staff, for resolving discovery disputes. The Board received comments from various parties in response to the NPRM. This hearing will provide a forum for the oral discussion of these and any other proposals that interested persons might wish to offer to expedite the resolution of SAC cases.

Date of Hearing. The hearing will begin at 10 a.m. on Thursday, February 27, 2003, in the 7th floor hearing room at the Board's headquarters in Washington, DC, and will continue, with short breaks if necessary, until every person scheduled to speak has been heard.

Notice of Intent To Participate. Any person wishing to speak at the hearing should file with the Board a written notice of intent to participate, and should indicate a requested time allotment, as soon as possible but no later than February 19, 2003.

Testimony. Each speaker should file with the Board his/her written testimony by February 21, 2003.

Paper Copies. Each person intending to speak at the hearing should submit an original and 10 paper copies of his/her notice of intent to participate (as soon as possible but no later than February 19, 2003) and testimony (by February 21, 2003).

Board Releases Available Via The Internet. Decisions and notices of the Board, including this notice, are available on the Board's Web site at *http://www.stb.dot.gov.*

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Dated: February 5, 2003.

Vernon A. Williams,

Secretary.

[FR Doc. 03–3370 Filed 2–7–03; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Ex Parte No. 282 (Sub–No. 20)]

Railroad Consolidation Procedures—Temporary Trackage Rights Exemption

In this docket, the Board is simultaneously serving and will be publishing a notice of proposed exemption and rulemaking (NPR) in which it proposes to modify its trackage rights class exemption at 49 CFR 1180.2(d). The Board's present rule, codified at 49 CFR 1180.2(d)(7), when invoked, authorizes trackage rights indefinitely, regardless of any durational provision in the trackage rights agreement between the parties. The authorization may be terminated only by obtaining authority from the Board to discontinue service.

If a carrier wishes to obtain an authorization that expires automatically on a certain date, the carrier must file an individual petition for exemption. Unlike a filing invoking the class exemption, which becomes effective in 20 days by rule, the relief sought in a petition may be given effect only by a specific decision of the Board. The preparation and issuance of such a decision normally takes significantly longer than 20 days.

Carriers seeking authorizations that expire automatically have adopted the practice of filing a notice invoking a class exemption and simultaneously filing a petition asking that the authorization expire on a particular date. The NPR proposes to add to the Board's rules a class exemption for trackage rights that terminate on a particular date, thereby allowing carriers to obtain such rights promptly with a single filing.

In *Implementation of the Regulatory Flexibility Act,* STB Administrative Matter No. 3, STB Issuance No. 52 (STB served Nov. 8, 2002) (*Implementation of the RFA*), the Board revised its internal procedures implementing the Regulatory Flexibility Act (RFA) to require, *inter alia,* that the Director of the Office of Proceedings determine whether a proposed rule will have a significant economic impact on a substantial number of small entities.[1] If the Director determines that the rule will not have such an impact, the Director must issue a ''certification of no significant economic impact.'' This certification must include a statement explaining the factual basis for the certification.[2]

In accordance with Board RFA procedures, I hereby certify that the proposed rule in this case will not have a significant economic impact on a substantial number of small entities. Rather, by eliminating the need for the requesting party to make a second filing, it will decrease filing costs and increase the efficiency of the regulatory process to the benefit of all filers, including small entities. Moreover, providing temporary trackage rights would not reduce competition. Temporary trackage rights could add service on a line and thereby improve service options or increase competition. Temporary trackage rights proposals that add no service on the line (*e.g.*, overhead, or bridge, service) merely maintain the status quo among carriers and shippers on the line and thus would have no adverse effects for carriers or shippers.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. This certification will be published in the **Federal Register**.

2. This certification will be served on the Chief Counsel for Advocacy, Office of Advocacy, U.S. Small Business Administration, Washington, DC 20416.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Decided: January 31, 2003.

Vernon A. Williams,

Secretary.

[FR Doc. 03–3250 Filed 2–7–03; 8:45 am]

BILLING CODE 4915–00–P

[1] These revised procedures were effective on November 14, 2002.

[2] If the Director determines that the rule *may* have a significant economic impact on a substantial number of small entities, the NPR must include an Initial Regulatory Flexibility Analysis (IRFA), and the final rule must include a Final Regulatory Flexibility Analysis (FRFA). These analyses, in general, describe the justification for the Board's action, any significant alternatives, any mitigating steps that have been or will be taken by the Board, the nature of the impact, and an estimate of the number of entities affected. *See Implementation of the RFA,* at 5–7.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34309]

The Kansas City Southern Railway Company—Trackage Rights Exemption—Illinois Central Railroad Company

Illinois Central Railroad Company (IC), pursuant to a written trackage rights agreement[1] between the Canadian National Railway Company (CN) and The Kansas City Southern Railway Company (KCS), will grant overhead trackage rights to KCS between the connection to KCS at approximately milepost 160.0 at Jackson, MS, and approximately milepost 67.5 at Palmer, MS (near Hattiesburg, MS), a distance of approximately 92.5 miles (the line).[2]

[1] The trackage rights agreement was concurrently filed under seal, along with a motion for protective order. A protective order was served in this proceeding on February 4, 2003.

[2] According to KCS, on May 1, 1998, KCS and CN agreed that, contingent upon CN obtaining approval to acquire control of IC, IC would grant overhead trackage rights to KCS over the line. CN was granted such approval in *Canadian National Railway Company, Grand Trunk Corporation, and Grand Trunk Western Railroad Incorporated—Control-Illinois Central Corporation, Illinois Central*

Continued

The transaction was scheduled to be consummated on or about February 1, 2003.

The purpose of the trackage rights is to allow KCS to use the line to handle traffic currently handled by IC for KCS pursuant to a haulage agreement, thereby improving its operating efficiency in the Jackson to Gulfport, MS market.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN,* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate,* 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If it contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34309, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on William A. Mullins, Troutman Sanders LLP, 401 Ninth Street, NW., Suite 1000, Washington, DC 20004–2134.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: February 5, 2003.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 03–3252 Filed 2–7–03; 8:45 am]

BILLING CODE 4915–00–P

Railroad Company, Chicago, Central and Pacific Railroad Company, and Cedar River Railroad Company, STB Finance Docket No. 33556, Decision No. 37 (STB served May 25, 1999). KCS states that, because it was able to operate via haulage rights over the line, it did not exercise its right, granted in the May 1, 1998 agreement, to convert the haulage rights to trackage rights and, therefore, did not previously seek a trackage rights exemption from the Board. Now, due to a change in KCS's operations and marketing plans, KCS desires to implement trackage rights over the line.

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedure 97–19

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Procedure 97–19, Timely Mailing Treated as Timely Filing.

DATES: Written comments should be received on or before April 11, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of revenue procedure should be directed to Carol Savage, (202) 622–3945, or through the Internet (*CAROL.A.SAVAGE@irs.gov.*), Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Timely Mailing Treated as Timely Filing.

OMB Number: 1545–1535.

Revenue Procedure Number: Revenue Procedure 97–19.

Abstract: Revenue Procedure 97–19 provides the criteria that will be used by the Internal Revenue Service to determine whether a a private delivery service qualifies as a designated private delivery service under section 7502 of the Internal Revenue Code.

Current Actions: There are no changes being made to the revenue procedure at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 5.

Estimated Time Per Respondent: 613 hours, 48 minutes.

Estimated Total Annual Burden Hours: 3,069.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 4, 2003.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03–3277 Filed 2–7–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedure 2003–4, Revenue Procedure 2003–5, Revenue Procedure 2003–6, and Revenue Procedure 2003–8

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Procedure 2003–4 (Letter Rulings), Revenue Procedure 2003–5 (Technical Advice), Revenue Procedure 2003–6 (Determination Letters), and Revenue Procedure 2003–8 (User Fees).

DATES: Written comments should be received on or before April 11, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the revenue procedures should be directed to Carol Savage, (202) 622–3945, or through the Internet (CAROL.A.SAVAGE@irs.gov.), Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Revenue Procedure 2003–4 (Letter Rulings), Revenue Procedure 2003–5 (Technical Advice), Revenue Procedure 2003–6 (Determination Letters), and Revenue Procedure 2003–8 (User Fees).

OMB Number: 1545–1520.

Revenue Procedure Number: Revenue Procedure 2003–4, Revenue Procedure 2003–5, Revenue Procedure 2003–6, and Revenue Procedure 2003–8.

Abstract: The information requested in these revenue procedures is required to enable the Office of the Division Commissioner (Tax Exempt and Government Entities) of the Internal Revenue Service to give advice on filing letter ruling, determination letter, and technical advice requests, to process such requests, and to determine the amount of any user fees.

Current Actions: There are no changes being made to these revenue procedures at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, business or other for-profit organizations, not-for-profit institutions, farms, and state, local or tribal governments.

Estimated Number of Respondents: 83,068.

Estimated Time Per Respondent: 2 hours, 8 minutes.

Estimated Total Annual Burden Hours: 177,986.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 4, 2003.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03–3278 Filed 2–7–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedure 2000–20

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Procedure 2000–20, Master and Prototype Plans.

DATES: Written comments should be received on or before April 11, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the revenue procedure should be directed to Carol Savage, (202) 622–3945, or through the Internet (CAROL.A.SAVAGE@irs.gov.), Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Master and Prototype Plans.

OMB Number: 1545–1674.

Revenue Procedure Number: Revenue Procedure 2000–20.

Abstract: The master and prototype revenue procedure sets forth the procedures for sponsors of master and prototype pension, profit-sharing and annuity plans to request an opinion letter from the Internal Revenue Service that the form of a master or prototype plan meets the requirements of section 401(a) of the Internal Revenue Code. The issuance of the opinion letter allows the sponsor to make retroactive changes to the form of the plan to conform with recent changes in statutory requirements.

Current Actions: There are no changes being made to the revenue procedure at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, business or other for-profit organizations, not-for-profit institutions, farms, and state, local or tribal governments.

Estimated Number of Respondents: 266,530.

Estimated Time Per Respondent: 1 hour, 32 minutes.

Estimated Total Annual Burden Hours: 408,563.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 4, 2003.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03–3279 Filed 2–7–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 2163(c)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13(44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 2163(c), Employment—Reference Inquiry.

DATES: Written comments should be received on or before April 11, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carol Savage, (202) 622–3945, or through the Internet *(CAROL.A.SAVAGE@irs.gov.)*, Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Employment—Reference Inquiry.

OMB Number: 1545–0274.

Form Number: 2163(c).

Abstract: Form 2163(c) is used by the Internal Revenue Service to verify past employment history and to question listed and developed references as to the character and integrity of current and potential Internal Revenue Service employees. The information received is incorporated into a report on which a security determination is based.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, business or other for-profit organizations, non-profit institutions, farms, Federal government, and state, local or tribal governments.

Estimated Number of Respondents: 20,000.

Estimated Time Per Respondent: 12 mins.

Estimated Total Annual Burden Hours: 4,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 4, 2003.

Glenn P. Kirkland,

IRS Reports Clearance Office.

[FR Doc. 03–3280 Filed 2–7–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Ruling 2000–8

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Ruling 2000–8, Negative Elections in Section 401(k) Plans.

DATES: Written comments should be received on or before April 11, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of revenue ruling should be directed to Carol Savage, (202) 622–3945, or through the Internet (*CAROL.A.SAVAGE@irs.gov.*), Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Negative Elections in Section 401(k) Plans.

OMB Number: 1545–1605.

Revenue Ruling Number: Revenue Ruling 2000–8.

Abstract: Revenue Ruling 2000–8 describes certain criteria that must be met before an employee's compensation can be contributed to an employer's section 401(k) plan in the absence of an affirmative election by the employee. Generally, before an employer can automatically include its employees in the employer's section 401(k) plan, the employees must be notified by the employer that they can elect out and they must be given a reasonable period of time in which to do so.

Current Actions: There are no changes being made to this revenue ruling at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, and not-for-profit institutions.

Estimated Number of Respondents: 1,500.

Estimated Time Per Respondent: 1 hour, 10 minutes.

Estimated Total Annual Burden Hours: 1,750.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 4, 2003.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03–3281 Filed 2–7–03; 8:45 am]

BILLING CODE 4830–01–P

Corrections

Federal Register

Vol. 68, No. 27

Monday, February 10, 2003

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF JUSTICE

[AAG/A Order No. 007–2003]

Privacy Act of 1974; System of Records

Correction

In notice document 03–2253 beginning on page 5048 in the issue of Friday, January 31, 2003, make the following correction:

On page 5048, in the second column, in the ninth line from the bottom, ‘‘agencyorganizationtask force’’ should read, ‘‘agency/organization/task force’’.

[FR Doc. C3–2253 Filed 2–7–03; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Proposed Agency Information Collection Activities; Comment Request—Thrift Financial Report

Correction

In notice document 03–1448 beginning on page 3318 in the issue of Thursday, January 23, 2003 make the following correction:

On page 3323, in the second column, in the heading ‘‘**34. Reporting Frequency of Schedule** ’’ should read ‘‘**33. Reporting Frequency of Schedule** ’’.

[FR Doc. C3–1448 Filed 2–7–03; 8:45 am]

BILLING CODE 1505–01–

Federal Register

Monday,
February 10, 2003

Part II

Department of Transportation

Federal Aviation Administration

14 CFR Parts 1, 91, 121, et al.
Enhanced Flight Vision Systems; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 1, 91, 121, 125, and 135

[Docket No. FAA–2003–14449; Notice No. 03–03]

RIN 2120–AH78

Enhanced Flight Vision Systems

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA is proposing to revise its regulations for takeoff and landing under instrument flight rules (IFR) to allow for the use of FAA-certified enhanced flight vision systems (EFVS) that would enable the pilot to meet enhanced flight visibility requirements. The action would allow the use of new technology. This NPRM also contains proposed EFVS-related changes to the FAA's previously published Area Navigation (RNAV) NPRM, which was published on December 17, 2002.

DATES: Send your comments on or before March 27, 2003.

ADDRESSES: Address your comments to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2003–14449 at the beginning of your comments, and you should submit two copies. If you wish to receive confirmation that the FAA has received your comments, include a self-addressed, stamped postcard on which the docket number appears.

You may also submit comments through the Internet to *http://dms.dot.gov.* You may review the public docket containing comments to these proposed regulations in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Dockets Office is on the plaza level of the Nassif Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Les Smith, Flight Technologies and Procedures Division, Flight Standards Service, AFS–400, Federal Aviation Administration, 800 Independence Ave. SW., Washington, DC 20591; telephone: (202) 385–4586.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. The FAA also invites comments on the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA asks that you send two copies of written comments.

The FAA will file in the docket all comments it receives, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. The docket is available for public inspection before and after the comment closing date. If you wish to review the docket in person, go to the address in the ADDRESSES section of this preamble between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also review the docket using the Internet at the web address in the ADDRESSES section.

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act statement in the **Federal Register** published on April 11, 2002 (65 FR 19477–19478) or you may visit *http://dms.dot.gov.*

Before acting on this proposal, the FAA will consider all comments it receives on or before the closing date for comments. The FAA will consider comments filed late if it is possible to do so without incurring expense or delay. The FAA may change this proposal in light of comments.

If you want the FAA to acknowledge receipt of your comments on this proposal, include with your comments a pre-addressed, stamped postcard on which the docket number appears. The FAA will stamp the date on the postcard and mail it to you.

Availability of Rulemaking Documents

You can get an electronic copy of this document using the Internet by:

(1) Searching the Department of Transportation's electronic Docket Magement System (DMS) Web page (*http://dms.dot.gov/search*);

(2) Visiting the Office of Rulemaking's Web page at *http://www.faa.gov/avr/armhome.htm;* or

(3) Accessing the Government Printing Office's Web page at *http://www.access.gpo.gov/su_docs/aces/aces140.html.*

You can also get a copy by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue, SW., Washington, DC 20591, or by calling 202–267–9680. Be sure to identify the docket number, or notice number with amendment number, of this rulemaking.

List of Abbreviations Used in This Document

APV—Approach procedure with vertical guidance
ASR—Airport surveillance radar
DA—Decision altitude
DH—Decision height
EFVS—Enhanced flight vision system
HUD—Head-up display
IFR—Instrument flight rules
ILS—Instrument landing system
MDA—Minimum descent altitude
PAR—Precision approach radar
RNAV—Area navigation

Background

Section 91.175 of 14 CFR prescribes flight visibility requirements when operating under instrument flight rules (IFR) using natural vision, to identify the approach lights and runway environment. These procedures were developed and improved over the years to provide for a high level of safety when operating an aircraft during reduced visibility conditions; however the current rules on instrument approach procedures do not allow for the use of new technologies such as enhanced flight vision systems (EFVS), which use imaging-sensor technology that provides a real-time image of the external topography, or synthetic vision systems, which uses a database computer-generated image of the external topography. Nor do the present rules define new terms such as ''enhanced flight visibility'' or ''synthetic vision'' as they relate to flight operations.

EFVS—As mentioned above, an EFVS uses imaging-sensor technologies that provide a real-time visual image of the external scene topography. During some reduced visibility conditions, an EFVS can display imagery that may significantly improve the pilot's capability to detect objects, such as approach lights and visual references of the runway environment, that may not otherwise be visible. This type of technology would be allowed (but not required) under this NPRM.

Synthetic vision—By contrast, a synthetic vision image is a computer-generated image of the external scene topography from the perspective of the flight deck that is derived from aircraft attitude, high-precision navigation solution, database of terrain, obstacles, and relevant cultural features. A synthetic vision system is an electronic means to display a synthetic vision image of the external scene topography to the flight crew. This NPRM would not provide for the use of this type of technology in the regulations; however, the FAA wishes to distinguish it from EFVS to be clear that synthetic vision systems are not being proposed as a means to comply with its flight visibility regulations.

Flight visibility— Section 1.1 of 14 CFR defines the term ''flight visibility'' as ''* * * the average forward horizontal distance, from the cockpit of an aircraft in flight, at which prominent unlighted objects may be seen and identified by day and prominent lighted objects may be seen and identified by night.'' Present rules do not allow the use of an EFVS to determine flight visibility as defined in the FAA's regulations. The proposed rule would allow for the use of an EFVS to determine ''enhanced flight visibility,'' and would permit descent and operation below decision height (DH), decision altitude (DA), or minimum descent altitude (MDA) based on the pilot's observation of images when using an EFVS.

Section 91.175(c) and (d)—Section 91.175(c) and (d) of 14 CFR specifies flight visibility requirements for operations below DA or MDA and landing under IFR and states that, when making an instrument approach to a civil airport, a pilot must use a standard instrument approach procedure prescribed for the airport.

Paragraph (c), Operation below DH or MDA, states that, where a DH or MDA is applicable, no pilot may operate an aircraft, except a military aircraft of the United States, at any airport below the authorized MDA or continue an approach below the authorized DH unless the flight visibility under paragraph (c)(2) is not less than the visibility prescribed in the standard instrument approach being used. Paragraph (c)(3) lists visual references that must also be distinctly visible and identifiable to the pilot.

Paragraph (d), Landing, states that ''No pilot operating an aircraft except a military aircraft of the United States, may land that aircraft when the flight visibility is less than the visibility prescribed in the standard instrument approach procedure being used.''

Based upon the existing § 91.175 regulation, the pilot cannot descend below the DH or MDA if the flight visibility is less than the visibility prescribed in the standard instrument approach procedure. The present § 91.175(c)(2) flight visibility requirements are not based upon a pilot's use of an EFVS.

Previous type designs—In 2001, the FAA issued special conditions for the airworthiness approval of one manufacturer's type design. The special conditions limited the scope of the intended function to the identification of the visual references listed in § 91.175(c)(3). The system design, under this limited intended function, was not approved for meeting the flight visibility requirements of § 91.175(c)(2) because its infrared sensor did not sense energy in the visual portion of the electromagnetic spectrum. In addition, the current operating rules do not establish criteria for the use of equipment that operates in non-visible portions of the electromagnetic spectrum. The proposed amendment would provide operational criteria for the desired function of an EFVS, which operates outside the visible portion of the electromagnetic spectrum.

Related NPRM

The FAA is conducting a thorough review of its rules to ensure consistency between the operating rules of 14 CFR and future proposed area navigation (RNAV) operations for the National Airspace System (NAS). On December 17, 2002, the FAA published a proposed rule entitled, ''Area Navigation (RNAV) and Miscellaneous Amendments'' (67 FR 77326; Dec. 17, 2002). That NPRM would enable the use of space-based navigation aid sensors for aircraft RNAV systems through all phases of flight (departure, en route, arrival, and approach) to enhance the safety and efficiency of the NAS.

The December 17, 2002 RNAV proposed rule also introduced the new terms ''approach procedure with vertical guidance (APV)'' and ''decision altitude (DA).'' In the NPRM, the FAA proposed to add definitions of these terms to § 1.1 as follows:

''Approach procedure with vertical guidance (APV)'' is an instrument approach procedure based on lateral path and vertical glide path. These procedures may not conform to requirements of precision approaches.

''Decision altitude (DA) is a specified altitude at which a person must initiate a missed approach if the person does not see the required visual reference. Decision altitude is expressed in feet above mean sea level.''

That NPRM also proposed to change §§ 91.175(c) introductory text, 121.651(c) introductory text and (d) introductory text, 125.381(c), and a portion of 135.225(c), which would also be amended in this NPRM. The proposed amendments to those sections are, therefore, shown in this document with the proposed RNAV-related changes and the proposed EFVS-related changes in place. See the chart comparing the current rules and the RNAV and EFVS proposals following the Section-by-Section analysis below.

Discussion of the Proposal

The FAA proposes to amend its rules to allow for the operational use of an EFVS, which can display imagery that may significantly improve the pilot's capability to detect objects that may not otherwise be visible. The provisions of this NPRM would apply to operations conducted under parts 91, 121, 125, 129, and 135.

The proposal also would provide that the pilot of an aircraft could use this system to determine ''enhanced flight visibility'' while flying a standard instrument approach procedure. An EFVS would enable the pilot to determine ''enhanced flight visibility'' at the DA, DH, or MDA, in lieu of ''flight visibility'' (as currently defined), by using a head-up display (HUD) to display sensor imagery of the approach lights or other visual references for the runway environment at a distance no less than the visibility prescribed in the instrument approach procedure being used.

The FAA would define ''enhanced flight visibility'' as the average forward horizontal distance, from the cockpit of an aircraft in flight, at which prominent topographical objects may be clearly distinguished and identified by day or night by a pilot using an EFVS. This definition would be substantially equivalent to the flight visibility requirement in § 91.175(c)(2). The pilot would use this enhanced flight visibility and go through a similar decision-making process as required by existing regulations to continue the approach from the DA, DH, or MDA and safely maneuver the aircraft for a landing on the intended runway.

Possible operational benefits—This proposed rule would not require the use of an EFVS. However, using an EFVS would allow operations in reduced visibility conditions that would not otherwise be possible. The proposed rule, therefore, could allow for operational benefits, reduce costs, and increase safety for aircraft equipped with an EFVS. Use of an EFVS with a HUD may improve the level of safety by improving position awareness, providing visual cues to maintain a stabilized approach, and minimizing missed approach situations. In addition to using an EFVS to satisfy § 91.175(l) requirements, an EFVS may allow the pilot to observe an obstruction on the runway, such as an aircraft or vehicle, earlier in the approach, and observe potential runway incursions during ground operations in reduced visibility conditions. Even in situations where the pilot experiences marginal visibility at the DA, DH, or MDA, he or she could still use an EFVS to have better situational awareness than may be possible without it.

Category I operations—The intent of this proposed rule is to retain the existing straight-in-landing Category I instrument landing system (ILS) or nonprecision instrument approach minima and to authorize the pilot to use FAA-certified EFVS imaging-sensor technologies to determine enhanced flight visibility. This proposed rule would allow a pilot to fly a straight-in landing Category I or nonprecision approach and descend below the DA, DH, or MDA using an EFVS.

Category II and Category III ILS approach procedures—This proposed rule would not allow the use of an EFVS for Category II and III ILS approach procedures. Proposed enhanced flight vision systems for these approaches would have to comply with the more stringent reliability, redundancy, and other criteria, as prescribed in applicable sections of 14 CFR and applicable advisory circulars.

Visual references—Section 91.175(c)(3) lists ten visual references, of which only one is required for the pilot to descend below the DH or MDA. The visual references are: (1) The approach light system, (2) threshold, (3) threshold markings, (4) threshold lights, (5) runway end identifier lights, (6) visual approach slope indicator, (7) touchdown zone or touch down zone markings, (8) touchdown zone lights, (9) runway or runway markings, and (10) the runway lights. If the approach light system is used as the reference, the pilot may not descend below 100 feet above the touchdown zone elevation unless the red terminating bars or the red side row bars are also distinctly visible and identifiable. As a parallel, the proposed rule states that, when using an EFVS, the approach light system (if installed), the runway threshold lights or markings, and the runway touchdown zone lights or markings would have to be distinctly visible and identifiable to the pilot.

Because the imaging-sensor technologies may not sense or display all of the identifying features of the visual references (*e.g.,* may not distinguish colored lights), the FAA is proposing that the approach light system (if installed), or the runway threshold and the touchdown zone, would have to be distinctly visible to the pilot when using the EFVS prior to descent from the DA, DH, or MDA. At 100 feet above the touchdown zone elevation and below, there would have to be sufficient flight visibility (without reliance on an EFVS) for the intended runway to be distinctly visible and identifiable to the pilot to continue to a landing.

Pilot qualifications—To use the EFVS equipment while conducting an instrument approach procedure under this proposal, the pilot(s) would have to be current and qualified in accordance with existing applicable requirements in 14 CFR part 61, 121, 125 or 135. Each foreign pilot would have to be qualified in accordance with the requirements of the civil aviation authority of the State of the operator. Foreign air carriers would be required to comply with this rule and their operations specifications. For all operators, this would include knowledge of the EFVS training requirements, operational procedures, and limitations as prescribed in the approved Airplane or Rotorcraft Flight Manual for the specific system.

Certification process—An EFVS proposed for use under this proposed rule would have to provide the pilot with sufficient guidance and visual cues so that the pilot could manually maneuver the aircraft to a landing on the intended runway. The sensor image alone may not be suitable to maneuver the aircraft. For the pilot(s) to maximize situational awareness while maneuvering the aircraft in the visual segment of the instrument approach procedure, at low altitudes and reduced visibility conditions, the FAA is proposing that several key components be provided by an EFVS to provide an adequate level of safety. The EFVS sensor imagery would have to be presented on a HUD that is centrally located in the pilot's primary field of view and in the pilot's line of vision along the flight path. The imagery must be real-time, independent of the navigation solution derived from the aircraft avionics, and must be clearly displayed so that it does not adversely obscure the pilot field of view through the cockpit window. Aircraft flight symbology, such as airspeed, vertical speed, attitude, heading and altitude would have to be displayed on the HUD and be clearly visible to the pilot. The displayed sensor imagery and aircraft symbology could not adversely obstruct the pilot's vision looking through the aircraft's forward windshield.

The FAA would conduct the certification and evaluation process in accordance with published guidance and current policy. The FAA would also evaluate the capabilities, operational procedures, training and limitations for the specific system as it is designed and flight-tested. In all cases, the applicant for an airworthiness type design would provide the FAA's Aircraft Certification Office (ACO) with a certification plan. The FAA would evaluate the plan to determine if it is addressed by current regulations or if special conditions would have to be established for the certification. The proposed EFVS would be evaluated in an operational context to determine if the system provides an equivalent level of safety when in operation compared to the present rules.

Section-by-Section Analysis

Section 1.1 General Definitions

The FAA proposes to amend § 1.1 to add definitions for the terms ''enhanced flight visibility,'' and ''enhanced flight vision system (EFVS).'' Including these terms in the FAA's regulations would allow for the use of new technology and establish the characteristics the FAA believes are essential for safe operations.

The FAA also proposes to add definitions for the terms ''synthetic vision'' and ''synthetic vision system.'' Although this proposed rule would not allow for synthetic vision, which is a database computer-generated image, the FAA believes it is necessary to distinguish it from an enhanced vision system, which uses imaging-sensor technology.

Section 1.2 Abbreviations and Symbols

The FAA is proposing to add the abbreviation ''EFVS'' to § 1.2 to reflect the addition of the proposed new term ''enhanced flight vision system (EFVS)'' in § 1.1.

Section 91.175 Takeoff and Landing Under IFR

Paragraph (c)—Paragraph (c) introductory text (as proposed at 67 FR 77341; Dec. 17, 2002), would be further amended to add the phrase ''except as provided in § 91.175(l) of this section, * * * .'' As discussed below, paragraph (l) would be added to allow the pilot to descend below the DA, DH, or MDA on a standard instrument approach using an EFVS. If a pilot cannot meet the requirements of § 91.175(c) using natural vision, the exception to those requirements as provided in paragraph (l) using an EFVS would apply.

Paragraph (d)—The FAA proposes to revise paragraph (d) to add a new requirement that no pilot operating an aircraft may land that aircraft when, for operations conducted under proposed paragraph (l), the requirements of proposed paragraph (l)(4) are not met. This would mean that, when the aircraft is operated from 100 feet above the touchdown zone elevation to the runway surface, without reliance on an EFVS, there would have to be sufficient flight visibility for the lights or markings of the threshold or the lights or markings of the touchdown zone to be distinctly visible and identifiable to the pilot to land the aircraft. For all other operations that are not conducted under § 91.175(l), the pilot could not land the aircraft if the flight visibility is less than the visibility prescribed in the standard instrument approach procedure being used.

Paragraph (e)—For the missed approach procedures in § 91.175(e), the FAA is proposing to revise the introduction to (e)(1) to add a reference to proposed paragraph (l). The operator of the aircraft first would have to determine whether the aircraft would be operated in accordance with § 91.175(c) (for flight visibility using natural vision) or with § 91.175(l) (using an EFVS). Once that decision is made, different requirements determine when a missed approach must be executed. If a pilot chose to operate under § 91.175(c) without an EFVS, he or she would follow existing rules for missed approaches. This proposed rule would not change the existing requirements under § 91.175(c).

If, on the other hand, the pilot chose to use an EFVS in accordance with § 91.175(l), the missed approach procedures remain the same as those published on the approach charts. If the pilot could not meet the requirements of § 91.175(l)(1) through (4), a missed approach must be executed. The requirements of § 91.175(l)(1) through (4) differ from the requirements of § 91.175(c)(1) through (3); however, these requirements provide a parallel to the decision-making process in § 91.175(c). For an operation conducted under § 91.175(l) with an EFVS, between the DA, DH, or MDA to 100 feet above the touchdown zone elevation of the runway of intended landing, an appropriate missed approach procedure would have to be immediately executed if the pilot were unable to continuously maintain the aircraft in a position from which a descent to a landing on the intended runway could be made at a normal rate of descent using normal maneuvers. For an operation conducted under part 121 or part 135, an appropriate missed approach procedure would have to be immediately executed if the pilot were unable to control the descent rate of the aircraft to allow touchdown to occur within the touchdown zone of the runway of intended landing. Under (l)(2), for all operations, below DA, DH, or MDA an appropriate missed approach procedure would have to be immediately executed when the pilot determined that the enhanced flight visibility observed by use of an EFVS is less than the visibility prescribed in the standard instrument approach procedure being used. Also if the visual references specified under (l)(3) were not distinctly visible and identifiable to the pilot in the EFVS display, a missed approach would have to be executed. Under (l)(4), for operations, between 100 feet above the touchdown zone elevation of the runway of intended landing and any lower altitude, the pilot would have to immediately execute a missed approach if, without reliance on an EFVS, there were not sufficient flight visibility for either the lights or markings of the threshold or the lights or markings of the touchdown zone to be distinctly visible and identifiable to the pilot.

Paragraph (l)—Paragraph (l) would be added to § 91.175 to describe the requirements for approach to straight-in landing operations below DA, DH, or MDA using an EFVS. The proposed rule would apply to pilots operating under parts 91, 121, 125, 129 and 135, and would require that parts 119 and 125 certificate holders, and part 129 operations specifications holders, be authorized to use an EFVS in their operations specifications.

Paragraph (l)(1) would state that the aircraft must be continuously in a position from which a descent, at normal rate using normal maneuvers, can be made. The proposed paragraph would also state that the descent rate for parts 121 and 135 operations would allow touchdown to occur within the touchdown zone of the runway of intended landing.

Proposed paragraph (l)(2) would provide an enhanced flight visibility requirement that would be equivalent to §§ 91.175(c)(2) and 121.651(c)(2) and (d)(2), except that the pilot could use an EFVS to determine ''enhanced flight visibility'' as compared to ''flight visibility'' with natural vision.

Paragraph (l)(3) would specify that the approach light system (if installed) or the runway threshold and the touchdown zone would have to be distinctly visible and identifiable to the pilot in the enhanced flight vision system display at the DA, DH, or MDA.

Paragraph (l)(4) would require that, at 100 feet above the touchdown zone elevation and below, the threshold lights or markings, or the touchdown zone lights or markings, would have to be distinctly visible and identifiable without relying on the enhanced flight vision system for the pilot to continue to a landing.

In (l)(5), the proposed rule would provide that pilots using EFVS-equipped aircraft be qualified in accordance with the applicable requirements of 14 CFR part 61 and part 121, 125, or 135, as applicable. Foreign operators would have to be qualified in accordance with their civil aviation authorities' requirements.

In (l)(6), the proposed rule would authorize EFVS operations for parts 119 and 125 certificate holders and part 129 operations specifications holders through their operations specifications.

In (l)(7), the proposed rule would require that the aircraft be equipped with an EFVS, the display of which would have to be suitable for maneuvering the aircraft. The EFVS and display would be required to have an FAA type design approved by the United States. For foreign-registered aircraft, the EFVS and display would have to be of a type design approved by the United States and comply with all requirements as if the aircraft were registered in the United States.

Paragraph (m)—Proposed paragraph (m) would establish the characteristics and features the FAA would require when approving an EFVS. It would ensure that a pilot using an EFVS remained in his or her normal sitting position and would be looking straight ahead along the forward flight path. The EFVS would have to include a head-up display centrally located in the pilot's primary field of view and would display the sensor imagery and the aircraft's flight's symbology so that the pilot's forward vision would not be adversely obscured. Because the pilot could not rely on the EFVS at 100 feet above the touchdown zone elevation and below for purposes of identifying items in proposed (l)(4), the FAA believes it would be essential for him or her to remain in a forward-looking position and be able to focus outside the cockpit with minimal transition from using the sensor imagery display to visual flying conditions (using natural vision) without the EFVS. The display characteristics and dynamics would have to be suitable for manual control of the aircraft.

Section 121.651 Takeoff and Landing Weather Minimums: IFR: All Certificate Holders

The FAA's Area Navigation (RNAV) NPRM published on December 17, 2002 (67 FR 77341; Dec. 17, 2002), set forth proposed amendments to the current provisions contained in § 121.651. By this document (*i.e.*, the Enhanced Flight Visibility Systems NPRM), the FAA amends the December 17, 2002 RNAV NPRM regarding this section in three ways.

First, in regard to paragraph (c) in the December 17, 2002 RNAV NPRM, the FAA makes the following amendments: The words ''and touch down'' would be removed. Thus, *regardless of which proposals are adopted first* (*i.e.*, RNAV or EFVS), those three words would be removed from paragraph (c) of § 121.651. The FAA is proposing to remove those words because it believes they are redundant of the landing requirements in both the existing and the proposed § 91.175(d), which also apply to part 121 operations.

Second, in paragraph (c), the words ''if either the requirements of § 91.175(l) of this chapter, or the following requirements are met'' would be added at the end. Thus, if the proposed amendments in this EFVS NPRM are adopted at the same time as the RNAV NPRM or after the adoption of the RNAV proposals, then today's proposal would allow for operations under the current requirements of § 121.651(c), or approach to straight-in-landing operations using an EFVS under § 91.175(l) when the EFVS proposals are adopted. By the same token, if the RNAV proposed rules are adopted before the EFVS proposals are adopted, then the language in proposed § 121.651(c) in this document would be adopted but without the reference to § 91.175(l). That is, the FAA would adopt proposed paragraph (c) without the clause ''* * * either the requirements of § 91.175(l) of this chapter or * * *.''. Thus, in this situation, that language would only be adopted when the substantive EFVS rules are adopted.

Third, in paragraph (d), by this document (*i.e.*, the Enhanced Flight Visibility Systems NPRM), the FAA amends its December 17, 2002 proposal. Paragraph (d) introductory text, as proposed in the FAA's Area Navigation (RNAV) NPRM published on December 17, 2002 (67 FR 77341; Dec. 17, 2002), would be further revised to include the words ''the requirements of § 91.175(l) of this chapter, or the following requirements are met'' at the end. This would allow for operations under the current requirements of § 121.651(d), or approach to straight-in-landing operations using an EFVS under § 91.175(l). (Note that the abbreviation ''PAR'' stands for ''precision approach radar.'') Thus, if the RNAV proposal is adopted first, then the new proposed language in proposed § 121.651(d) in this document (*i.e.*, ''* * * the requirements of § 91.175(l) of this chapter, or the following requirements are met: * * *'') would not be adopted at that time but would only be adopted when, and if, the proposals in the EFVS NPRM are adopted.

Section 125.381 Takeoff and Landing Weather Minimums: IFR

The FAA is proposing to further amend paragraph (c) as proposed in the FAA's Area Navigation (RNAV) NPRM published on December 17, 2002 (67 FR 77346). There are several reasons for the FAA's actions. First, as currently published in the Code of Federal Regulations, it appears as if a clause that is wholly contained within paragraph (c)(3) only applies to (c)(3), when, in fact, that language was, and is, intended to apply to paragraphs (c)(1), (c)(2) and (c)(3). That language begins ''* * * the approach may be continued * * *.'' Thus, in this proposal, the FAA has reorganized the regulatory language to more clearly set forth the requirements.

Second, the FAA proposes to remove language in the current rule (*i.e.*, ''* * * and a landing may be made * * *'') and similar language (*i.e.*, ''* * * and landing * * *'') in the RNAV NPRM. The FAA is proposing this because this language is redundant of the regulatory requirements in the existing § 91.175(d), which does, and would continue to, apply to part 125 operators, and it is redundant of the proposed requirements in proposed § 91.175(d).

Third, all of the following changes to the proposed § 125.381(c) in the RNAV NPRM that are described in this paragraph would be adopted regardless of which rule is adopted first. In other words, the section and paragraph citations below are in reference to the proposed regulatory sections and paragraphs in the RNAV NPRM. Moreover, if the proposals in the EFVS NPRM are adopted first, the changes described below would amend the current § 125.381(c), even though the other proposals in the RNAV NPRM would not have been adopted at that point. The FAA is proposing to amend the end of paragraph (c) introductory text by changing the words, ''continue with the approach and landing only if both of the following conditions are met—'' to read ''continue with the approach only if the requirements of § 91.175(l) of this chapter, or both of the following conditions are met—.'' The FAA is also proposing to make technical corrections to paragraph (c)(1) to specify that the airplane would have to be in one of the prescribed approach phases of the flight (not a landing phase) when a later weather report is received indicating below minimum conditions, or the pilot in command would not be authorized to continue the approach to DA, DH, or MDA. Also, in (c)(1)(i), the word ''approach'' would be added after ''APV'' to improve readability. In (c)(1)(iii), the paragraph would be reworded to define the final approach on ASR/PAR (airport surveillance radar/ precision approach radar) procedures and be renumbered as (c)(1)(ii). Paragraph (c)(1)(ii) would be renumbered as (c)(1)(iii) and be rewritten to more specifically describe the airplane position during the nonprecision final approach. In paragraph (c)(2) of the RNAV proposal (and in paragraph (c)(3) of the existing rule), the reference to ''MAP'' (missed approach point) would be corrected with ''MDA.'' Also in paragraph (c)(2) of the RNAV proposal the reference to the words ''in the certificate holder's operations specifications'' would be replaced with the words ''for the procedure being used'' because the minimums would not be prescribed in operations specifications. If only the RNAV proposal is adopted, the changes described above would be included in the RNAV final rule except for references to § 91.175(l).

Section 135.225 IFR: Takeoff, Approach, and Landing Minimums

The FAA is proposing to further amend § 135.225(c) as proposed in the FAA's Area Navigation (RNAV) NPRM published on December 17, 2002 (67 FR 77346). There are several reasons for the FAA's actions. First, as currently published in the Code of Federal Regulations, it appears that the clause, ''* * * the approach may be continued and a landing made * * *'' in paragraph (c)(3)(ii) only applies to (c)(3)(ii), when, in fact, that language was, and is, intended to apply to paragraphs (c)(1), (c)(2), and (c)(3)(i) as well. Second, in this proposal, the words ''and a landing made'' would be removed. Additionally, a second clause in (c)(3)(ii) beginning with the words ''* * * if a pilot finds * * *'' would be recodified as a new condition for paragraph (c). This would be renumbered as (c)(2). All of the paragraphs in (c)(1) would be renumbered and the content of those paragraphs would mirror the proposal of § 125.381 as explained above, except that the word ''aircraft'' would be used instead of ''airplane.'' The proposed changes to the sections and paragraphs of the RNAV NPRM in this EFVS NPRM would be adopted regardless of which rule is adopted first. However, if only the RNAV proposal is adopted, these proposed changes would be included in the RNAV final rule except for references to § 91.175(l). The proposed changes in the RNAV NPRM are no longer being considered for adoption.

Comparison of Current Rules and RNAV and EFVS Proposals (§§ 91.175, 121.651, 125.381, and 135.225)

§ 91.175 Current Rule	RNAV Proposed Rule	EFVS Proposed Rule
§ 91.175 Takeoff and landing under IFR.	**§ 91.175 Takeoff and landing under IFR.**	**§ 91.175 Takeoff and landing under the IFR.**
* *	* *	* * *
(c) *Operation below DH or MDA*. Where a DH or MDA is applicable, no pilot may operate an aircraft, except a military aircraft of the United States, at any airport below the authorized MDA or continue an approach below the authorized DH unless—	(c) *Operation below DA/DH or MDA*.. Where a DA/DH or MDA is applicable, no pilot may operate an aircraft, except military aircraft of the United States, at any airport below the authorized MDA or continue an approach below the authorized DA/DH unless—	(c) *Operation below DA, DH or MDA.* Except as provided in paragraph (1) of this section, where a DA, DH or MDA is applicable, no pilot may operate an aircraft, except a military aircraft of the United States, at any airport below the authorized MDA or continue an approach below the authorized DA/DH unless—
* *	* *	* * *
(d) *Landing.* No pilot operating an aircraft, except a military aircraft of the United States, may land that aircraft, when the flight visibility is less than the visibility prescribed in the standard instrument approach procedure being used. (e) *Missed approach procedures.* Each pilot operating an aircraft, except a military aircraft of the United States, shall immediately execute an appropriate missed approach procedure when either of the following conditions exist: (l) Whenever the requirements of paragraph (c) of this section are not met at either of the following times: (i) When the aircraft is being operated below MDA; or (ii) Upon arrival at the missed approach point, including a DH where a DH is specified and its use is required, and at any time after that until touchdown. * * * * *	(e) * * * (l) * * * (ii) Upon arrival at the missed approach point, including a DA/DH where a DA/DH is specified and its use is required, and at any time after that until touchdown. * * * * *	(d) Landing. No pilot operating an aircraft, except a military aircraft of the United States, may land that aircraft when— (1) For operations conducted under paragraph (l) of this section, the requirements of (l)(4) of this section are not met; or (2) For all other part 91 operations and parts 121, 125, 129, and 135 operations, the flight visibility is less than the visibility prescribed in the standard instrument approach procedure being used. * * * * * (e) * * * (1) Whenever operating an aircraft pilot operating pursuant to paragraph (c) or (1) of this section and the requirements of that paragraph are not met at either of the following times: * * * * * (l) *Approach to straight-in landing may land that approach operations below DA, DH, or MDA using an enhanced flight vision system (EFVS).* No pilot operating under this section or §§ 121.651, 125.381, and 135.225 of this chapter may operate an aircraft at any airport at any airport below the authorized MDA or continue an approach below the authorized DA or DH and land unless— (1) The aircraft is continuously in a position from which a descent to a landing on the intended runway can be made at a normal rate of descent using normal manuevers, and, for operations conducted under part 121 or part 135 of this chapter, the descent rate will allow touchdown to occur within the touchdown zone of the runway of intended landing: (2) The pilot determines that the enhanced flight visibility observed by use of a certified enhanced flight vision system is not less than the visibility prescribed in the standard instrument approach procedure being used; (3) The following visual references for the intended runway are distinctly visible and identifiable to the pilot using the enhanced flight vision system: (i) The approach light system (if installed); or (ii) The runway threshold and the touchdown zone;

§ 91.175 Current Rule	RNAV Proposed Rule	EFVS Proposed Rule
		(4) At 100 feet above the touchdown zone elevation of the runway of intended landing and below that altitude, the flight visibility must be sufficient for the following to be distinctly visible and identifiable to the pilot without reliance on the enhanced flight vision system to continue to a landing: (i) The lights or markings of the threshold; or (ii) The lights or markings of the touchdown zone; (5) The pilot(s) is qualified to use an EFVS as follows: (i) For parts 119 and 125 certificate holders, the applicable training, testing and qualifications provisions of parts 121, 125 and 135 of this chapter; (ii) For foreign persons, in accordance with the requirements of the requirements of the civil aviation authority of the State of the operator; or (iii) For persons conducting any other operation, in accordance with the applicable qualification and proficiency requirements of part 61 of this chapter and the operating limitations specified in the approved Airplane or Rotorcraft Flight Manual; (6) For parts 119 and 125 certificate holders, their operations specifications authorize use of EFVS; and (7) The aircraft is equipped with, and the pilot uses, an enhanced flight vision system, the display of which is suitable for maneuvering the aircraft and his either an FAA type design approval or, for a foreign-registered aircraft, the EFVS is of a type design approved by the United States and complies with all of the requirements of this chapter that would be applicable to that aircraft were it registered in the United States, including the requirements for a U.S. standard airworthiness certificate. (m) For purposes of this section, ''enhanced flight vision system'' (EFVS) is an installed airborne system comprised of the following features and characteristics: (1) An electronic means to provide a display of the forward external scene topography (natural or manmade features of a place or region especially in a way to show their relative positions and elevation) through the use of imaging sensors, such as a forward-looking infrared, millimeter wave radiometry, millimeter wave radar, and low-light level image intensifying; (2) The EFVS sensor imagery and aircraft flight symbology (*i.e.* at least airspeed, vertical speed, aircraft attitude, heading, altitude) are presented on a head-up display so that they are clearly visible to the pilot flying in his or her normal position and line of vision and looking forward along the flight path; (3) The displayed imagery and aircraft flight symbology does not adversely obscure the pilot's outside view or field of view through the cockpit window; (4) The EFVS includes the display element, sensors, computers and power supplies, indications, and controls. It may receive inputs from an airborne navigation system or flight guidance system; and (5) The display characteristics and dynamics are suitable for manual control of the aircraft.

§ 121.651 Current Rule	RNAV Proposed Rule	EFVS Proposed Rule
§ 121.651 Takeoff and landing weather minimums: IFR: All certificate holders.	**§ 121.651 Amended**	**§ 121.651 Takeoff and landing weather minimums: IFR: All certificate holders.**

§ 121.651 Current Rule	RNAV Proposed Rule	EFVS Proposed Rule
* *	* *	* * *
(c) If a pilot has begun the final approach segment of an instrument approach procedure in accordance with paragraph (b) of this section and after that receives a later weather report indicating below-minimum conditions, the pilot may continue the approach to DH or MDA. Upon reaching DH or at MDA, and at any time before the missed approach point, the pilot may continue the approach below DH or MDA and touch down if—	(c) In paragraph (c), replace the term ''DH'' with the term ''DA/DH'' wherever it appears.	(c) If a pilot has begun the final approach segment of an instrument approach procedure in accordance with paragraph (b) of this section, and after that receives a later weather report indicating below-minimum conditions, the pilot may continue the approach to DA/DH or MDA. Upon reach DA/DH, or at MDA, and at any time before the missed approach point, the pilot may continue the approach below DA/DH or MDA if either the requirements of § 91.175(l) of this chapter, or the following requirements are met:
* * * * *	* * * * *	* * * * *
(d) A pilot may begin the final approach segment of an instrument approach procedure other than a Category II or Category III procedure at an airport when the visibility is less than the visibility minimums prescribed for that procedure if that airport is served by a operative ILS and an operative PAR, and both are used by the pilot. However, no pilot may operate an aircraft below the authorized MDA, or continue an approach below the authorized DH, unless—	(d) A pilot may begin the final approach segment of a Category I precision approach procedure at an airport when the visibility is less than the visibility minimums prescribed for that procedure if that airport is served by an operative PAR and another operative precision instrument approach system, and both the PAR and the precision approach are used by the pilot. However, no person may continue an approach below the authorized DA, unless—	(d) A pilot may begin the final approach segment of a Category I precision approach procedure at an airport when the visibility is less than the visibility minimums prescribed for that procedure if that airport is served by an operative PAR and another operative precision instrument approach system, and both the PAR and the precision approach are used by the pilot. However, no person may continue an approach below the authorized DA unless the requirements of § 91.175(l) of this chapter, or the following requirements are met:
* * * * *	* * * * *	

§ 125.381 Current Rule	RNAV Proposed Rule	EFVS Proposed Rule
§ 125.381 Takeoff and landing weather minimums: IFR.	**§ 125.381 Takeoff and landing weather minimums: IFR.**	**§ 125.381 Takeoff and landing weather minimums: IFR.**
(c) If a pilot initiates an instrument approach procedure when the latest weather report indicates that the specified visibility minimums exist, and a later weather report indicating below minimums conditions is received after the airplane—	(c) If a pilot initiates an instrument approach procedure based on a weather report that indicates that the specified visibility minimums exist and subsequently receives another weather report that indicates that conditions have worsened to below the minimum requirements, then the pilot may continue with the approach and landing only if both of the following conditions are met—	(c) If a pilot initiates an instrument approach procedure based on a weather report that indicates that the specified visibility minimums exist and subsequently receives another weather report that indicates that conditions are below the minimum requirements, then the pilot may continue with the approach only if, the requirement of § 91.175(l) of this chapter, or both of the following conditions are met—
(1) Is on an ILS final approach and has passed the outer marker, (2) Is on final approach segment using a nonprecision approach procedure, or (3) Is on PAR final approach and has been turned over to the final approach controller, the approach may be continued and a landing may be made if the pilot in command finds, upon reaching the authorized MAP or HD, that actual weather conditions are at least equal to the minimums prescribed in the operations specifications.	(1) The later weather report is received when the airplane is in one of the following landing phases: (i) The airplane is on a precision approach or APV and has passed the precision final approach fix. (ii) The airplane is on the final approach segment using a nonprecision approach procedure. (iii) The airplane is on a PAR final approach and has been turned over to the final approach controller. (2) The pilot in command finds, on reaching the authorized MAP or DA/DH, that the actual weather conditions are at or above the minimums prescribed in the certificate holders' operations specifications.	(1) The later weather report is received when the airplane is in one of the following approach phases: (i) The airplane is on a precision or APV approach and has passed the precision final approach fix; (ii) The airplane is on an ASR or PAR final approach and has been turned over to the final approach controller; or (iii) The airplane is on a nonprecision final approach and the airplane— (A) Has passed the appropriate facility or final approach fix; or (B) Where a final approach fix is not specified, has completed the procedure turn and is established inbound toward the airport on the final approach course within the distance prescribed in the procedure; and (2) The pilot in command finds, on reaching the authorized MDA, or DA/DH, that the actual weather conditions are at or above the minimums prescribed for the procedure being used.

§ 135.225 Current Rule	RNAV Proposed Rule	EFVS Proposed Rule
§ 135.225 IFR: Takeoff, approach and landing minimums.	**§ 135.225 IFR: Takeoff, approach and landing minimums.**	**§ 135.225 IFR: Takeoff, approach, and landing minimums.**
* *	* * *	* *
(c) If a pilot has begun the final approach segment of an instrument approach to an airport under paragraph (b) of this section and a later weather report indicating below minimum conditions is received after the aircraft is—	(c) * * *	(c) If a pilot has begun the final approach segment of an instrument approach to an airport under paragraph (b) of this section, and the pilot receives a later weather report indicating that conditions have worsened to below the minimum requirements, then the pilot may continue the approach only if the requirements of § 91.175(l) of this chapter, or both of the following conditions, are met—
(1) On an ILS final approach and has passed the final approach fix; or (2) On an ASR or PAR final approach and has been turned over to the final approach controller; or (3) On a final approach using a VOR, NDB, or comparable approach procedure; and the aircraft— (i) Has passed the appropriate facility or final approach fix; or (ii) Where a final approach fix is not specified, has completed the procedure turn and is established inbound toward the airport on the final approach course within the distance prescribed in the procedure; the approach may be continued and a landing made if the pilot finds, upon reaching the authorized MDA or DH, that actual weather conditions are at least equal to the minimums prescribed for the procedure. * * * * *	(1) On a precision or APV approach and has passed the precision final approach fix; or * * * * * (3) On a nonprecision final approach; and the aircraft— * * * * * (ii) Where a final approach fix is not specified, has completed the procedure turn and is established inbound toward the airport on the final approach course within the distance prescribed in the procedure. The approach may be continued, and a landing made, if the pilot finds, upon reaching the authorized MDA or DA/DH, that actual weather conditions are at or above the minimums prescribed for the procedure.	(1) The later weather report is received when the aircraft is in one of the following approach phases: (i) The aircraft is on a precision or APV approach and has passed the precision final approach fix; (ii) The aircraft is on an ASR or PAR final approach and has been turned over to the final approach controller; or (iii) The aircraft is on a nonprecision final approach and the aircraft— (A) Has passed the appropriate facility or final approach fix; or (B) Where a final approach fix is not specified, has completed the procedure turn and is established inbound toward the airport on the final approach course within the distance prescribed in the procedure; and (2) The pilot in command finds, on reaching the authorized MDA or DA/DH, that the actual weather conditions are at or above the minimums prescribed for the procedure being used.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the FAA consider the impact of paperwork and other information collection burdens imposed on the public. The FAA has determined that there are no new information collection requirements associated with this proposed rule.

International Compatibility

In keeping with United States obligations under the Convention on International Civil Aviation, it is the FAA's policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has determined that there are no ICAO Standards and Recommended Practices that corresponded to these proposed regulations.

Economic Evaluation

Proposed changes to regulations must undergo several economic analyses. First, Executive Order 12866 directs each Federal agency proposing or adopting a regulation to only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic impact of the regulatory changes on small entities. Third, the Trade Agreements Act (19 U.S.C. 2531–2533) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, the Trade Agreements Act requires agencies to consider international standards and, where appropriate, as the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub.L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation).

In conducting these analyses, FAA has determined this rule: (1) Has benefits that justify its costs, is not a "significant regulatory action" as defined in section 3 (f) of Executive Order 12866, and is not "significant" as defined in DOT's Regulatory Policies and Procedures; (2) will not have a significant economic impact on a substantial number of small entities; (3) will not reduce barriers to international trade; and does not impose an unfunded mandate on state, local, or tribal governments, or on the private sector.

However, for regulations with an expected minimal impact the above-specified analyses are not required. The Department of Transportation Order DOT 2100.5 prescribes policies and procedures for simplification, analysis, and review of regulations. If it is determined that the expected impact is so minimal that the proposal does not warrant a full evaluation, a statement to that effect and the basis for it is included in proposed regulation.

This rulemaking would allow, but does not require, operators to use an enhanced flight vision system on board their aircraft provided their pilots are properly trained. Therefore, this proposed rule would not impose any cost on any operator. As discussed above under "Discussion of the Proposal," the FAA believes that this

NPRM would provide operational benefits and improve the level of safety.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation.'' To achieve that principle, the RFA requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant impact on a substantial number of small entities. If the determination is that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

The FAA certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities. The use of the enhanced flight vision system would not be mandatory. This rulemaking would allow the operators the option of using this equipment. Therefore, this rulemaking would not impose any cost on any operators. The FAA solicits comments from the public regarding this determination of no significant economic impact on a substantial number of small entities.

International Trade Impact Analysis

The Trade Agreement Act of 1979 prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards.

The FAA has assessed the potential effect of this proposed rule and determined that it will not apply to foreign entities or to trade with foreign entities. In accordance with the above statute, the FAA has assessed the potential effect of this proposed rule and has determined that it would have only a domestic impact and, therefore create no obstacles to the foreign commerce of the United States.

Unfunded Mandates Assessment

The Unfunded Mandates Reform Act of 1995 (the Act), enacted as Pub. L. 104–4 on March 22, 1995 is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments. Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed of final agency rule that may result in an expenditure of $100 million or more expenditure (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a ''significant regulatory action.''

The proposed rule would not contain such a mandate. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

Executive Order 13132, Federalism

The FAA has analyzed this proposed rule under the principles and criteria of Executive Order 13132, Federalism. The FAA has determined that this action would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, we determined that this notice does not have federalism implications.

Environmental Analysis

FAA Order 1050.1D defines FAA action as that may be categorically excluded from preparation of a National Environmental Policy Act (NEPA) environmental impact statement. In accordance with FAA Order 1050.1D, appendix 4, paragraph 4(j), this proposed rulemaking action qualifies for a categorical exclusion.

Energy Impact

The energy impact of this proposed rule has been assessed in accordance with the Energy Policy and Conservation Act (EPCA) (Pub. L. 94–163, as amended; 42 U.S.C. 6362) and FAA Order 1053.1. The FAA has determined that the proposed rule is not a major regulatory action under the provisions of the EPCA.

List of Subjects

14 CFR Part 1

Air transportation.

14 CFR Part 91

Agriculture, Air traffic control, Aircraft, Airmen, Airports, Aviation safety, Canada, Freight, Mexico, Noise control, Political candidates.

14 CFR Part 121

Air carriers, Aircraft, Airmen, Aviation safety, Charter flights, Safety, Transportation.

14 CFR Parts 125 and 135

Aircraft, Airmen, Aviation safety.

The Proposed Amendments

In consideration of the foregoing, the Federal Administration Aviation proposes to amend chapter I of 14 CFR as follows:

PART 1—DEFINITIONS AND ABBREVIATIONS

1. The authority for part 1 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

2. Amend § 1.1 by adding the following definitions in alphabetical order to read as follows:

§ 1.1 General definitions.

* * * * *

Enhanced flight visibility means the average forward horizontal distance, from the cockpit of an aircraft in flight, at which prominent topographical objects may be clearly distinguished and identified by day or night by a pilot using an enhanced flight vision system.

Enhanced flight vision system (EFVS) means an electronic means to provide a display of the forward external scene topography (natural or manmade features of a place or region especially in a way to show their relative positions and elevation) through the use of imaging sensors, such as a forward looking infrared, millimeter wave radiometry, millimeter wave radar, low light level image intensifying.

* * * * *

Synthetic vision means a computer-generated image of the external scene topography from the perspective of the flight deck that is derived from aircraft attitude, high-precision navigation solution, and database of terrain, obstacles and relevant cultural features.

Synthetic vision system means an electronic means to display a synthetic vision image of the external scene topography to the flight crew.

* * * * *

3. Section 1.2 is amended by adding the following abbreviation in alphabetical order to read as follows:

§ 1.2 Abbreviations and symbols.

* * * * *

EFVS means enhanced flight vision system

* * * * *

PART 91—GENERAL OPERATING AND FLIGHT RULES

4. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. 106(g), 1155, 40103, 40113, 40120, 44101, 44111, 44701, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46504, 46506–46507, 47122, 47508, 47528–47531, articles 12 and 29 of the Convention on International Civil Aviation (61 Stat. 1180).

5. Amend § 91.175 by revising paragraphs (c) introductory text, as proposed at 67 FR 77341; Dec. 17, 2002, (d), and (e)(1) introductory text, and by adding paragraphs (l) and (m) to read as follows:

§ 91.175 Takeoff and landing under IFR.

* * * * *

(c) *Operation below DA, DH or MDA.* Except as provided in paragraph (l) of this section, where a DA, DH, or MDA is applicable, no pilot may operate an aircraft, except a military aircraft of the United States, at any airport below the authorized MDA or continue an approach below the authorized DA/DH unless—

* * * * *

(d) *Landing.* No pilot operating an aircraft, except a military aircraft of the United States, may land that aircraft when—

(1) For operations conducted under paragraph (l) of this section, the requirements of paragraph (l)(4) of this section are not met; or

(2) For all other part 91 operations and parts 121, 125, 129, and 135 operations, the flight visibility is less than the visibility prescribed in the standard instrument approach procedure being used.

(e) * * *

(1) Whenever operating an aircraft pursuant to paragraph (c) or (l) of this section and the requirements of that paragraph are not met at either of the following times:

* * * * *

(l) *Approach to straight-in landing operations below DA, DH, or MDA using an enhanced flight vision system (EFVS).* No pilot operating under this section or §§ 121.651, 125.381, and 135.225 of this chapter may operate an aircraft at any airport below the authorized MDA or continue an approach below the authorized DA or DH and land unless—

(1) The aircraft is continuously in a position from which a descent to a landing on the intended runway can be made at a normal rate of descent using normal maneuvers, and, for operations conducted under part 121 or part 135 of this chapter, the descent rate will allow touchdown to occur within the touchdown zone of the runway of intended landing;

(2) The pilot determines that the enhanced flight visibility observed by use of a certified enhanced flight vision system is not less than the visibility prescribed in the standard instrument approach procedure being used;

(3) The following visual references for the intended runway are distinctly visible and identifiable to the pilot using the enhanced flight vision system:

(i) The approach light system (if installed); or

(ii) The runway threshold and the touchdown zone;

(4) At 100 feet above the touchdown zone elevation of the runway of intended landing and below that altitude, the flight visibility must be sufficient for the following to be distinctly visible and identifiable to the pilot without reliance on the enhanced flight vision system to continue to a landing:

(i) The lights or markings of the threshold; or

(ii) The lights or markings of the touchdown zone;

(5) The pilot(s) is qualified to use an EFVS as follows—

(i) For parts 119 and 125 certificate holders, the applicable training, testing and qualification provisions of parts 121, 125, and 135 of this chapter;

(ii) For foreign persons, in accordance with the requirements of the civil aviation authority of the State of the operator; or

(iii) For persons conducting any other operation, in accordance with the applicable qualification and proficiency requirements of part 61 of this chapter and the operating limitations specified in the approved Airplane or Rotorcraft Flight Manual;

(6) For parts 119 and 125 certificate holders, and part 129 operations specifications holders, their operations specifications authorize use of EFVS; and

(7) The aircraft is equipped with, and the pilot uses, an enhanced flight vision system, the display of which is suitable for maneuvering the aircraft and has either an FAA type design approval or, for a foreign-registered aircraft, the EFVS is of a type design approved by the United States and complies with all of the requirements of this chapter that would be applicable to that aircraft were it registered in the United States, including the requirements for a U.S. standard airworthiness certificate.

(m) For purposes of this section, ‘‘enhanced flight vision system’’ (EFVS) is an installed airborne system comprised of the following features and characteristics:

(1) An electronic means to provide a display of the forward external scene topography (natural or manmade features of a place or region especially in a way to show their relative positions and elevation) through the use of imaging sensors, such as a forward-looking infrared, millimeter wave radiometry, millimeter wave radar, and low-light level image intensifying;

(2) The EFVS sensor imagery and aircraft flight symbology (*i.e.* at least airspeed, vertical speed, aircraft attitude, heading, altitude) are presented on a head-up display so that they are clearly visible to the pilot flying in his or her normal position and line of vision and looking forward along the flight path;

(3) The displayed imagery and aircraft flight symbology does not adversely obscure the pilot's outside view or field of view through the cockpit window;

(4) The EFVS includes the display element, sensors, computers and power supplies, indications, and controls. It may receive inputs from an airborne navigation system or flight guidance system; and

(5) The display characteristics and dynamics are suitable for manual control of the aircraft.

PART 121—OPERATING REQUIREMENTS: DOMESTIC FLAG, AND SUPPLEMENTAL OPERATIONS

6. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 40119, 41706, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 44901, 44903–44904, 44912, 46105.

7. Amend § 121.651 by revising paragraphs (c) introductory text and (d) introductory text, as proposed at 67 FR 77345; Dec. 17, 2002, to read as follows:

§ 121.651 Takeoff and landing weather minimums: IFR: All certificate holders.

* * * * *

(c) If a pilot has begun the final approach segment of an instrument approach procedure in accordance with paragraph (b) of this section, and after that receives a later weather report indicating below-minimum conditions, the pilot may continue the approach to DA/DH or MDA. Upon reaching DA/DH, or at MDA, and at any time before the missed approach point, the pilot may continue the approach below DA/DH or MDA if either the requirements of § 91.175(l) of this chapter, or the following requirements are met:

* * * * *

(d) A pilot may begin the final approach segment of a Category I precision approach procedure at an airport when the visibility is less than the visibility minimums prescribed for that procedure if that airport is served by an operative PAR and another operative precision instrument approach system, and both the PAR and the precision approach are used by the pilot. However, no person may continue an approach below the authorized DA unless the requirements of § 91.175(l) of this chapter, or the following requirements are met:

* * * * *

PART 125—CERTIFICATION AND OPERATIONS: AIRPLANES HAVING A SEATING CAPACITY OF 20 OR MORE PASSENGERS OR A MAXIMUM PAYLOAD CAPACITY OF 6,000 POUNDS OR MORE; AND RULES GOVERNING PERSONS ON BOARD SUCH AIRCRAFT

8. The authority citation for part 125 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44705, 44710–44711, 44713, 44716–44717, 44722.

9. Amend § 125.381 by revising paragraph (c), as proposed at 67 FR 77346; Dec. 17, 2002, to read as follows:

§ 125.381 Takeoff and landing weather minimums: IFR.

* * * * *

(c) If a pilot initiates an instrument approach procedure based on a weather report that indicates that the specified visibility minimums exist and subsequently receives another weather report that indicates that conditions are below the minimum requirements, then the pilot may continue with the approach only if, the requirements of § 91.175(l) of this chapter, or both of the following conditions are met—

(1) The later weather report is received when the airplane is in one of the following approach phases:

(i) The airplane is on a precision or APV approach and has passed the precision final approach fix;

(ii) The airplane is on an ASR or PAR final approach and has been turned over to the final approach controller; or

(iii) The airplane is on a nonprecision final approach and the airplane—

(A) Has passed the appropriate facility or final approach fix; or

(B) Where a final approach fix is not specified, has completed the procedure turn and is established inbound toward the airport on the final approach course within the distance prescribed in the procedure; and

(2) The pilot in command finds, on reaching the authorized MDA, or DA/DH, that the actual weather conditions are at or above the minimums prescribed for the procedure being used.

* * * * *

PART 135—OPERATING REQUIREMENTS: COMMUTER AND ON-DEMAND OPERATIONS

10. The authority citation for part 135 continues to read as follows:

Authority: 49 U.S.C. 106(g), 44113, 44701–44702, 44705, 44709, 44711–44713, 44715–44717, 44722.

11. Amend § 135.225 by revising paragraph (c), as proposed at 67 FR 77348, Dec. 17, 2002, to read as follows:

§ 135.225 IFR: Takeoff, approach, and landing minimums.

* * * * *

(c) If a pilot has begun the final approach segment of an instrument approach to an airport under paragraph (b) of this section, and the pilot receives a later weather report indicating that conditions have worsened to below the minimum requirements, then the pilot may continue the approach only if the requirements of § 91.175(l) of this chapter, or both of the following conditions, are met—

(1) The later weather report is received when the aircraft is in one of the following approach phases:

(i) The aircraft is on a precision or APV approach and has passed the precision final approach fix;

(ii) The aircraft is on an ASR or PAR final approach and has been turned over to the final approach controller; or

(iii) The aircraft is on a nonprecision final approach and the aircraft—

(A) Has passed the appropriate facility or final approach fix; or

(B) Where a final approach fix is not specified, has completed the procedure turn and is established inbound toward the airport on the final approach course within the distance prescribed in the procedure; and

(2) The pilot in command finds, on reaching the authorized MDA or DA/DH, that the actual weather conditions are at or above the minimums prescribed for the procedure being used.

* * * * *

Issued in Washington, DC on February 4, 2003.

Louis C. Cusimano,

Acting Director, Flight Standards Service.

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Vol. 68, No. 27

Monday, February 10, 2003

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FEDERAL REGISTER PAGES AND DATE, FEBRUARY

5203–5528 3
5529–5784 4
5785–6060 5
6061–6338 6
6339–6602 7
6603–6814 10

CFR PARTS AFFECTED DURING FEBRUARY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
7644 6055
7645 6057
7646 6059
Executive Orders:
13285 5203
Presidential Determinations:
No. 2003-13 of January 29, 2003 5785
No. 2003-14 of January 30, 2003 5787

5 CFR

576 5529
875 5530
890 5470
Proposed Rules:
890 6649

7 CFR

1 39
301 .... 5793, 5794, 6603
318 .... 5796, 5800
319 6544
330 6341
354 6341
1413 5205
Proposed Rules:
319 6352
360 6653
1466 6655

9 CFR

4 6341
11 6341
12 6341
49 6341
50 6341
51 6341
52 6341
53 6341
54 6341
70 6341
71 6341
72 6341
73 6341
74 6341
75 6341
77 6341
78 6341
79 6341
80 6341
85 6341
89 6341
91 6341
92 6341
93 6341
94 .... 5802, 6341
95 6341
96 6341
97 6341
98 6341
99 6341
122 6341
123 6341
124 6341
130 6341
145 6341
147 6341
160 6341
161 6341
162 6341
166 6341
Proposed Rules:
94 6673

11 CFR

110 6346

12 CFR

272 6061
1805 5704
1806 5717
Proposed Rules:
3 6363
5 6363
6 6363
7 6363
9 6363
28 6363
34 6363
609 5595
611 5587
612 5587
614 .... 5587, 5595
615 5595
617 .... 5587, 5595

13 CFR

Proposed Rules:
120 5234
121 5234

14 CFR

23 5538
25 5208
39 .... 5541, 5805, 5808, 5810, 5812, 5815, 5818, 5819, 5822, 6347
71 .... 6606, 6607
119 5782
121 5782
129 5782
135 5782
150 6608
183 5782
Proposed Rules:
1 6802
39 .... 5610, 5856, 6376, 6379, 6380, 6382, 6383
71 .... 5613, 6677
91 6802
121 6802
125 .... 5488, 6802

135 5488, 6802

15 CFR

2016 5542

17 CFR

1 5545
30 5545
190 5545
205 6296
210 6006
228 5982
229 5982
239 6564
240 5348, 6006
249 5348, 5982, 6006, 6564
270 5348, 6564
274 5348, 6006, 6564
275 6585

Proposed Rules:

205 6324
240 6324
249 6324

18 CFR

375 6608

20 CFR

404 5210
416 5210

21 CFR

58 6609
201 6062
529 5562
866 5825

Proposed Rules:

1 5378, 5428

22 CFR

123 6609

Proposed Rules:

307 5857

23 CFR

Proposed Rules:

1225 6091

24 CFR

234 6396

Proposed Rules:

902 6262
3500 6385

26 CFR

1 5346, 6081, 6350

28 CFR

522 5563

30 CFR

100 6609

31 CFR

103 6613

32 CFR

199 6617
254 6082
706 5827, 5828, 5829, 5830, 5831

33 CFR

117 5832, 6621
165 5833

Proposed Rules:

117 5858, 6100
165 5614
385 5860

37 CFR

Proposed Rules:

201 6678

38 CFR

19 6621
36 6625

Proposed Rules:

3 6679

40 CFR

52 5221, 5228, 6627, 6629
61 6082
62 6630, 6633
63 6635
180 5835, 5839, 5847

Proposed Rules:

52 5246, 5263, 6681
62 6681, 6682

42 CFR

405 6636
419 6636

Proposed Rules:

413 6682

44 CFR

64 5852
65 6644

Proposed Rules:

61 5264

46 CFR

356 5564

47 CFR

32 6351
53 6351
54 6646
64 6351, 6352
73 5583, 5584, 5854, 5855, 6082

Proposed Rules:

0 6689
43 6689
63 6689
64 6689
73 5616, 5617, 5860, 5861, 5862
90 6687, 6688

48 CFR

923 6355
936 6355
970 6355
1804 5230
1827 5230
1835 5230
1852 5230

Proposed Rules:

2 5774
31 5774
52 5778

49 CFR

571 6359
1570 6083
1572 6083

Proposed Rules:

173 6689
192 6385
571 5863
1180 6695

50 CFR

622 6360
648 6088
679 5585

Proposed Rules:

20 6697
21 6697
92 6697
300 6103
679 6386

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT FEBRUARY 10, 2003

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Fresh cut flowers and greens promotion and information order; termination; published 1-10-03

Fresh cut flowers and greens promotion and information order; CFR part removed

Correction; published 1-15-03

Oranges and grapefruit grown in—

Texas; published 1-10-03

Plant Variety Protection Office; fee increase; published 1-10-03

ENVIRONMENTAL PROTECTION AGENCY

Air pollutants, hazardous; national emission standards:

Benzene waste operations; published 11-12-02

Air programs; approval and promulgation; State plans for designated facilities and pollutants:

Virgin Islands; published 12-11-02

Air quality implementation plans; approval and promulgation; various States:

Alabama; published 12-12-02

FEDERAL RESERVE SYSTEM

International banking operations (Regulation K):

International lending supervision; published 1-9-03

INTERIOR DEPARTMENT

Fish and Wildlife Service

Endangered and threatened species:

Critical habitat designations—

Plant species from Island of Lanai, HI; published 1-9-03

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

Airbus; published 1-6-03

Bell; published 1-24-03

Boeing; published 1-6-03

Bombardier; published 2-5-03

Eurocopter France; published 1-24-03

Fokker; published 1-6-03

McDonnell Douglas; published 1-6-03

Saab; published 1-6-03

VETERANS AFFAIRS DEPARTMENT

Board of Veterans Appeals:

Appeals regulations and rules of practice—

Veterans law judges; new title for Board members; published 2-10-03

Loan guaranty: implementation of Public Law 107-103; published 2-10-03

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Plant-related quarantine, foreign:

Hot water dip treatment for mangoes; comments due by 2-18-03; published 1-2-03 [FR 02-33049]

Ya pears from China; comments due by 2-18-03; published 12-20-02 [FR 02-32056]

Plant related quarantine; domestic:

Mexican fruit fly; comments due by 2-21-03; published 12-23-02 [FR 02-32178]

AGRICULTURE DEPARTMENT

Forest Service

National Forest System lands; projects and activities; notice, comment, and appeal procedures; comments due by 2-18-03; published 12-18-02 [FR 02-31681]

AGRICULTURE DEPARTMENT

Farm Service Agency

Program regulations:

Rural Business Enterprise and Television Demonstration Grant Programs; rural area definition, etc.; comments due by 2-18-03; published 12-20-02 [FR 02-32050]

AGRICULTURE DEPARTMENT

Food Safety and Inspection Service

Meetings:

Listeria risk assessment; comments due by 2-21-03; published 2-6-03 [FR 03-02942]

AGRICULTURE DEPARTMENT

Natural Resources Conservation Service

Support activities:

Technical service provider assistance; comments due by 2-19-03; published 11-21-02 [FR 02-29301]

AGRICULTURE DEPARTMENT

Rural Business-Cooperative Service

Program regulations:

Rural Business Enterprise and Television Demonstration Grant Programs; rural area definition, etc.; comments due by 2-18-03; published 12-20-02 [FR 02-32050]

AGRICULTURE DEPARTMENT

Rural Housing Service

Program regulations:

Rural Business Enterprise and Television Demonstration Grant Programs; rural area definition, etc.; comments due by 2-18-03; published 12-20-02 [FR 02-32050]

AGRICULTURE DEPARTMENT

Rural Utilities Service

Program regulations:

Rural Business Enterprise and Television Demonstration Grant Programs; rural area definition, etc.; comments due by 2-18-03; published 12-20-02 [FR 02-32050]

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:

Atlantic highly migratory species—

Atlantic tunas, swordfish, and sharks; comments due by 2-17-03; published 1-27-03 [FR 03-01786]

International fisheries regulations:

Pacific halibut—

Catch sharing plan and sport fishing management; comments due by 2-18-03; published 2-6-03 [FR 03-02806]

DEFENSE DEPARTMENT

Acquisition regulations:

Governmentwide commercial purchase card internal controls; comments due by 2-18-03; published 12-20-02 [FR 02-31948]

ENVIRONMENTAL PROTECTION AGENCY

Air pollutants, hazardous; national emission standards:

Iron and steel foundries; comments due by 2-21-03; published 12-23-02 [FR 02-31234]

Lime manufacturing plants; comments due by 2-18-03; published 12-20-02 [FR 02-31233]

Primary magnesium refining facilities; comments due by 2-21-03; published 1-22-03 [FR 03-00089]

Taconite iron ore processing plants; comments due by 2-18-03; published 12-18-02 [FR 02-31231]

Air quality implementation plans; approval and promulgation; various States:

Florida; comments due by 2-18-03; published 1-16-03 [FR 03-00857]

Maryland; comments due by 2-18-03; published 1-16-03 [FR 03-00854]

Nevada; comments due by 2-21-03; published 1-22-03 [FR 03-01145]

Ohio; comments due by 2-18-03; published 1-16-03 [FR 03-00961]

Oregon; comments due by 2-21-03; published 1-22-03 [FR 03-00852]

Pennsylvania; comments due by 2-18-03; published 1-17-03 [FR 03-00731]

Superfund program:

National oil and hazardous substances contingency plan—

National priorities list update; comments due by 2-18-03; published 1-16-03 [FR 03-00733]

National priorities list update; comments due by 2-18-03; published 1-16-03 [FR 03-00734]

National priorities list update; comments due by 2-20-03; published 1-21-03 [FR 03-01144]

FEDERAL COMMUNICATIONS COMMISSION

Common carrier services:

International Settlements Policy reform and international settlement rates; comments due by

2-18-03; published 2-10-03 [FR 03-03137]

HEALTH AND HUMAN SERVICES DEPARTMENT

Children and Families Administration

Grants and cooperative agreements; availability, etc.:

Community Services Block Grants; charitable choice provisions; comments due by 2-18-03; published 12-17-02 [FR 02-31675]

Temporary Assistance for Needy Families Program:

Charitable Choice provisions; comments due by 2-18-03; published 12-17-02 [FR 02-31674]

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Food for human consumption:

Food labeling—

D-tagatose and dental caries; health claims; comments due by 2-18-03; published 12-2-02 [FR 02-30474]

HEALTH AND HUMAN SERVICES DEPARTMENT

Grants:

Substance Abuse Prevention and Treatment Block Grant and Projects for Assistance in Transition from Homelessness Programs; charitable choice provisions; comments due by 2-18-03; published 12-17-02 [FR 02-31673]

INTERIOR DEPARTMENT

Surface Mining Reclamation and Enforcement Office

Permanent program and abandoned mine land reclamation plan submissions:

Alabama; comments due by 2-18-03; published 1-16-03 [FR 03-00975]

Maryland; comments due by 2-18-03; published 1-16-03 [FR 03-00979]

JUSTICE DEPARTMENT

Prisons Bureau

Inmate control, custody, care, etc.:

Inmate discipline respecting violations of telephone and smoking policies; code number changes for agency tracking purposes only; comments due by 2-18-03; published 12-18-02 [FR 02-31661]

LABOR DEPARTMENT

Mine Safety and Health Administration

Mining products; testing, evaluation, and approval:

Mobile battery-powered machines; plug and receptacle-type connectors; alternate locking devices; comments due by 2-21-03; published 1-22-03 [FR 03-01305]

RAILROAD RETIREMENT BOARD

Railroad Retirement Act:

Account benefits ratio; comments due by 2-18-03; published 12-18-02 [FR 02-31776]

Annuity or lump sum application; Internet filing; comments due by 2-18-03; published 12-18-02 [FR 02-31775]

SECURITIES AND EXCHANGE COMMISSION

Securities:

Issuer repurchases; safe harbor provisions; amendments; comments due by 2-18-03; published 12-18-02 [FR 02-31656]

Sarbanes-Oxley Act of 2002; implementation—

Disclosure requirements; comments due by 2-18-03; published 1-31-03 [FR 03-02018]

Listed company audit committees; standards; comments due by 2-18-03; published 1-17-03 [FR 03-00690]

SOCIAL SECURITY ADMINISTRATION

Administrative regulations:

Federal Tort Claims Act and Military Personnel and Civilian Employees Claims Act; claims; comments due by 2-18-03; published 12-20-02 [FR 02-32051]

Social security benefits and supplemental security income:

Federal old-age, survivors, and disability benefits, and aged, blind, and disabled—

Multiple body system impairments; medical criteria evaluation; comments due by 2-21-03; published 12-23-02 [FR 02-32217]

STATE DEPARTMENT

Visas; immigrant and nonimmigrant documentation:

Uncertified foreign health-care workers; comments due by 2-18-03; published 12-17-02 [FR 02-31603]

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

Boeing; comments due by 2-18-03; published 1-3-03 [FR 03-00048]

Eurocopter France; comments due by 2-18-03; published 12-18-02 [FR 02-31751]

McDonnell Douglas; comments due by 2-18-03; published 1-3-03 [FR 03-00047]

Raytheon; comments due by 2-18-03; published 1-3-03 [FR 03-00049]

Stemme GmbH & Co. KG; comments due by 2-21-03; published 1-14-03 [FR 03-00673]

Airworthiness standards:

Special conditions—

Pratt & Whitney Canada PT6-67D turbine engine; comments due by 2-18-03; published 1-16-03 [FR 03-01010]

TREASURY DEPARTMENT

Internal Revenue Service

Agency information collection activities:

Proposed collection; comment request; comments due by 2-21-03; published 12-23-02 [FR 02-32154]

Income taxes:

Outbound liquidations to foreign corporations; anti-abuse rule guidance; comments due by 2-18-03; published 11-20-02 [FR 02-29508]

Rents and royalties; advance rentals inclusion in gross income; comments due by 2-18-03; published 12-18-02 [FR 02-31858]

Taxable stock transactions; information reporting requirement; cross-reference; comments due by 2-18-03; published 11-18-02 [FR 02-29200]

TREASURY DEPARTMENT

Practice and procedure:

Practice before Internal Revenue Service; comments due by 2-18-03; published 12-19-02 [FR 02-31989]

VETERANS AFFAIRS DEPARTMENT

Privacy Act; implementation; comments due by 2-18-03; published 12-19-02 [FR 02-31708]

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.nara.gov/fedreg/plawcurr.html*.

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H.J. Res. 13/P.L. 108–4

Making further continuing appropriations for the fiscal year 2003, and for other purposes. (Jan. 31, 2003; 117 Stat. 8)

Last List January 15, 2003

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Title	Stock Number	Price	Revision Date
1, 2 (2 Reserved)	(869–048–00001–1)	9.00	Jan. 1, 2002
3 (1997 Compilation and Parts 100 and 101)	(869–048–00002–0)	59.00	[1] Jan. 1, 2002
4	(869–048–00003–8)	9.00	[4] Jan. 1, 2002
5 Parts:			
1–699	(869–048–00004–6)	57.00	Jan. 1, 2002
700–1199	(869–048–00005–4)	47.00	Jan. 1, 2002
1200–End, 6 (6 Reserved)	(869–048–00006–2)	58.00	Jan. 1, 2002
7 Parts:			
1–26	(869–048–00001–1)	41.00	Jan. 1, 2002
27–52	(869–048–00008–9)	47.00	Jan. 1, 2002
53–209	(869–048–00009–7)	36.00	Jan. 1, 2002
210–299	(869–048–00010–1)	59.00	Jan. 1, 2002
300–399	(869–048–00011–9)	42.00	Jan. 1, 2002
400–699	(869–048–00012–7)	57.00	Jan. 1, 2002
700–899	(869–048–00013–5)	54.00	Jan. 1, 2002
900–999	(869–048–00014–3)	58.00	Jan. 1, 2002
1000–1199	(869–048–00015–1)	25.00	Jan. 1, 2002
1200–1599	(869–048–00016–0)	58.00	Jan. 1, 2002
1600–1899	(869–048–00017–8)	61.00	Jan. 1, 2002
1900–1939	(869–048–00018–6)	29.00	Jan. 1, 2002
1940–1949	(869–048–00019–4)	53.00	Jan. 1, 2002
1950–1999	(869–048–00020–8)	47.00	Jan. 1, 2002
2000–End	(869–048–00021–6)	46.00	Jan. 1, 2002
8	(869–048–00022–4)	58.00	Jan. 1, 2002
9 Parts:			
1–199	(869–048–00023–2)	58.00	Jan. 1, 2002
200–End	(869–048–00024–1)	56.00	Jan. 1, 2002
10 Parts:			
1–50	(869–048–00025–4)	58.00	Jan. 1, 2002
51–199	(869–048–00026–7)	56.00	Jan. 1, 2002
200–499	(869–048–00027–5)	44.00	Jan. 1, 2002
500–End	(869–048–00028–3)	58.00	Jan. 1, 2002
11	(869–048–00029–1)	34.00	Jan. 1, 2002
12 Parts:			
1–199	(869–048–00030–5)	30.00	Jan. 1, 2002
200–219	(869–048–00031–3)	36.00	Jan. 1, 2002
220–299	(869–048–00032–1)	58.00	Jan. 1, 2002
300–499	(869–048–00033–0)	45.00	Jan. 1, 2002
500–599	(869–048–00034–8)	42.00	Jan. 1, 2002
600–End	(869–048–00035–6)	61.00	Jan. 1, 2002
13	(869–048–00036–4)	47.00	Jan. 1, 2002
14 Parts:			
1–59	(869–048–00037–2)	60.00	Jan. 1, 2002
60–139	(869–048–00038–1)	58.00	Jan. 1, 2002
140–199	(869–048–00039–9)	29.00	Jan. 1, 2002
200–1199	(869–048–00040–2)	47.00	Jan. 1, 2002
1200–End	(869–048–00041–1)	41.00	Jan. 1, 2002
15 Parts:			
0–299	(869–048–00042–9)	37.00	Jan. 1, 2002
300–799	(869–048–00043–7)	58.00	Jan. 1, 2002
800–End	(869–048–00044–5)	40.00	Jan. 1, 2002
16 Parts:			
0–999	(869–048–00045–3)	47.00	Jan. 1, 2002
1000–End	(869–048–00046–1)	57.00	Jan. 1, 2002
17 Parts:			
1–199	(869–048–00048–8)	47.00	Apr. 1, 2002
200–239	(869–048–00049–6)	55.00	Apr. 1, 2002
240–End	(869–048–00050–0)	59.00	Apr. 1, 2002
18 Parts:			
1–399	(869–048–00051–8)	59.00	Apr. 1, 2002
400–End	(869–048–00052–6)	24.00	Apr. 1, 2002
19 Parts:			
1–140	(869–048–00053–4)	57.00	Apr. 1, 2002
141–199	(869–048–00054–2)	56.00	Apr. 1, 2002
200–End	(869–048–00055–1)	29.00	Apr. 1, 2002
20 Parts:			
1–399	(869–048–00056–9)	47.00	Apr. 1, 2002
400–499	(869–048–00057–7)	60.00	Apr. 1, 2002
500–End	(869–048–00058–5)	60.00	Apr. 1, 2002
21 Parts:			
1–99	(869–048–00059–3)	39.00	Apr. 1, 2002
100–169	(869–048–00060–7)	46.00	Apr. 1, 2002
170–199	(869–048–00061–5)	47.00	Apr. 1, 2002
200–299	(869–048–00062–3)	16.00	Apr. 1, 2002
300–499	(869–048–00063–1)	29.00	Apr. 1, 2002
500–599	(869–048–00064–0)	46.00	Apr. 1, 2002
600–799	(869–048–00065–8)	16.00	Apr. 1, 2002
800–1299	(869–048–00066–6)	56.00	Apr. 1, 2002
1300–End	(869–048–00067–4)	22.00	Apr. 1, 2002
22 Parts:			
1–299	(869–048–00068–2)	59.00	Apr. 1, 2002
300–End	(869–048–00069–1)	43.00	Apr. 1, 2002
23	(869–048–00070–4)	40.00	Apr. 1, 2002
24 Parts:			
0–199	(869–048–00071–2)	57.00	Apr. 1, 2002
200–499	(869–048–00072–1)	47.00	Apr. 1, 2002
500–699	(869–048–00073–9)	29.00	Apr. 1, 2002
700–1699	(869–048–00074–7)	58.00	Apr. 1, 2002
1700–End	(869–048–00075–5)	29.00	Apr. 1, 2002
25	(869–048–00076–3)	68.00	Apr. 1, 2002
26 Parts:			
§§ 1.0-1–1.60	(869–048–00077–1)	45.00	Apr. 1, 2002
§§ 1.61–1.169	(869–048–00078–0)	58.00	Apr. 1, 2002
§§ 1.170–1.300	(869–048–00079–8)	55.00	Apr. 1, 2002
§§ 1.301–1.400	(869–048–00080–1)	44.00	Apr. 1, 2002
§§ 1.401–1.440	(869–048–00081–0)	60.00	Apr. 1, 2002
§§ 1.441-1.500	(869-048-00082-8)	47.00	Apr. 1, 2002
§§ 1.501–1.640	(869–048–00083–6)	44.00	[6] Apr. 1, 2002
§§ 1.641–1.850	(869–048–00084–4)	57.00	Apr. 1, 2002
§§ 1.851–1.907	(869–048–00085–2)	57.00	Apr. 1, 2002
§§ 1.908–1.1000	(869–048–00086–1)	56.00	Apr. 1, 2002
§§ 1.1001–1.1400	(869–048–00087–9)	58.00	Apr. 1, 2002
§§ 1.1401–End	(869–048–00088–7)	61.00	Apr. 1, 2002
2–29	(869–048–00089–5)	57.00	Apr. 1, 2002
30–39	(869–048–00090–9)	39.00	Apr. 1, 2002
40–49	(869–048–00091–7)	26.00	Apr. 1, 2002
50–299	(869–048–00092–5)	38.00	Apr. 1, 2002
300–499	(869–048–00093–3)	57.00	Apr. 1, 2002
500–599	(869–048–00094–1)	12.00	[5] Apr. 1, 2002
600–End	(869–048–00095–0)	16.00	Apr. 1, 2002
27 Parts:			
1–199	(869–048–00096–8)	61.00	Apr. 1, 2002

Title	Stock Number	Price	Revision Date
200–End	(869–048–00097–6)	13.00	Apr. 1, 2002
28 Parts:			
0-42	(869–048–00098–4)	58.00	July 1, 2002
43-end	(869-048-00099-2)	55.00	July 1, 2002
29 Parts:			
0–99	(869–048–00100–0)	45.00	[8]July 1, 2002
100–499	(869–048–00101–8)	21.00	July 1, 2002
500–899	(869–048–00102–6)	58.00	July 1, 2002
900–1899	(869–048–00103–4)	35.00	July 1, 2002
1900–1910 (§§ 1900 to 1910.999)	(869–048–00104–2)	58.00	July 1, 2002
1910 (§§ 1910.1000 to end)	(869–048–00105–1)	42.00	[8]July 1, 2002
1911–1925	(869–048–00106–9)	29.00	July 1, 2002
1926	(869–048–00107–7)	47.00	July 1, 2002
1927–End	(869–048–00108–5)	59.00	July 1, 2002
30 Parts:			
1–199	(869–048–00109–3)	56.00	July 1, 2002
200–699	(869–048–00110–7)	47.00	July 1, 2002
700–End	(869–048–00111–5)	56.00	July 1, 2002
31 Parts:			
0–199	(869–048–00112–3)	35.00	July 1, 2002
200–End	(869–048–00113–1)	60.00	July 1, 2002
32 Parts:			
1–39, Vol. I		15.00	[2] July 1, 1984
1–39, Vol. II		19.00	[2] July 1, 1984
1–39, Vol. III		18.00	[2] July 1, 1984
1–190	(869–048–00114–0)	56.00	July 1, 2002
191–399	(869–048–00115–8)	60.00	July 1, 2002
400–629	(869–048–00116–6)	47.00	July 1, 2002
630–699	(869–048–00117–4)	37.00	July 1, 2002
700–799	(869–048–00118–2)	44.00	July 1, 2002
800–End	(869–048–00119–1)	46.00	July 1, 2002
33 Parts:			
1–124	(869–048–00120–4)	47.00	July 1, 2002
125–199	(869–048–00121–2)	60.00	July 1, 2002
200–End	(869–048–00122–1)	47.00	July 1, 2002
34 Parts:			
1–299	(869–048–00123–9)	45.00	July 1, 2002
300–399	(869–048–00124–7)	43.00	July 1, 2002
400–End	(869–048–00125–5)	59.00	July 1, 2002
35	(869–048–00126–3)	10.00	[7]July 1, 2002
36 Parts			
1–199	(869–048–00127–1)	36.00	July 1, 2002
200–299	(869–048–00128–0)	35.00	July 1, 2002
300–End	(869–048–00129–8)	58.00	July 1, 2002
37	(869–048–00130–1)	47.00	July 1, 2002
38 Parts:			
0–17	(869–048–00131–0)	57.00	July 1, 2002
18–End	(869–048–00132–8)	58.00	July 1, 2002
39	(869–048–00133–6)	40.00	July 1, 2002
40 Parts:			
1–49	(869–048–00134–4)	57.00	July 1, 2002
50–51	(869–048–00135–2)	40.00	July 1, 2002
52 (52.01–52.1018)	(869–048–00136–1)	55.00	July 1, 2002
52 (52.1019–End)	(869–048–00137–9)	58.00	July 1, 2002
53–59	(869–048–00138–7)	29.00	July 1, 2002
60 (60.1–End)	(869–048–00139–5)	56.00	July 1, 2002
60 (Apps)	(869–048–00140–9)	51.00	[8]July 1, 2002
61–62	(869–048–00141–7)	38.00	July 1, 2002
63 (63.1–63.599)	(869–048–00142–5)	56.00	July 1, 2002
63 (63.600–63.1199)	(869–048–00143–3)	46.00	July 1, 2002
63 (63.1200-End)	(869–048–00144–1)	61.00	July 1, 2002
64–71	(869–048–00145–0)	29.00	July 1, 2002
72–80	(869–048–00146–8)	59.00	July 1, 2002
81–85	(869–048–00147–6)	47.00	July 1, 2002
86 (86.1–86.599–99)	(869–048–00148–4)	52.00	[8]July 1, 2002
86 (86.600–1–End)	(869–048–00149–2)	47.00	July 1, 2002
87–99	(869–048–00150–6)	57.00	July 1, 2002
100–135	(869–048–00151–4)	42.00	July 1, 2002
136–149	(869–048–00152–2)	58.00	July 1, 2002
150–189	(869–048–00153–1)	47.00	July 1, 2002
190–259	(869–048–00154–9)	37.00	July 1, 2002
260–265	(869–048–00155–7)	47.00	July 1, 2002
266–299	(869–048–00156–5)	47.00	July 1, 2002
300–399	(869–048–00157–3)	43.00	July 1, 2002
400–424	(869–048–00158–1)	54.00	July 1, 2002
425–699	(869–048–00159–0)	59.00	July 1, 2002
700–789	(869–048–00160–3)	58.00	July 1, 2002
790–End	(869–048–00161–1)	45.00	July 1, 2002
41 Chapters:			
1, 1–1 to 1–10		13.00	[3] July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)		13.00	[3] July 1, 1984
3–6		14.00	[3] July 1, 1984
7		6.00	[3] July 1, 1984
8		4.50	[3] July 1, 1984
9		13.00	[3] July 1, 1984
10–17		9.50	[3] July 1, 1984
18, Vol. I, Parts 1–5		13.00	[3] July 1, 1984
18, Vol. II, Parts 6–19		13.00	[3] July 1, 1984
18, Vol. III, Parts 20–52		13.00	[3] July 1, 1984
19–100		13.00	[3] July 1, 1984
1–100	(869–048–00162–0)	23.00	July 1, 2002
101	(869–048–00163–8)	43.00	July 1, 2002
102–200	(869–048–00164–6)	41.00	July 1, 2002
201–End	(869–048–00165–4)	24.00	July 1, 2002
42 Parts:			
1–399	(869–048–00166–2)	56.00	Oct. 1, 2002
400–429	(869–048–00167–1)	59.00	Oct. 1, 2002
430–End	(869–048–00168–9)	61.00	Oct. 1, 2002
43 Parts:			
1–999	(869–048–00169–7)	47.00	Oct. 1, 2002
1000–end	(869–048–00170–1)	59.00	Oct. 1, 2002
44	(869–048–00171–9)	47.00	Oct. 1, 2002
45 Parts:			
1–199	(869–048–00172–7)	57.00	Oct. 1, 2002
200–499	(869–048–00173–5)	31.00	[9]Oct. 1, 2002
500–1199	(869–048–00174–3)	47.00	Oct. 1, 2002
1200–End	(869–048–00175–1)	57.00	Oct. 1, 2002
46 Parts:			
1–40	(869–048–00176–0)	44.00	Oct. 1, 2002
41–69	(869–048–00177–8)	37.00	Oct. 1, 2002
70–89	(869–048–00178–6)	14.00	Oct. 1, 2002
90–139	(869–048–00179–4)	42.00	Oct. 1, 2002
140–155	(869–048–00180–8)	24.00	[9]Oct. 1, 2002
156–165	(869–048–00181–6)	31.00	[9]Oct. 1, 2002
166–199	(869–048–00182–4)	44.00	Oct. 1, 2002
200–499	(869–048–00183–2)	37.00	Oct. 1, 2002
500–End	(869–048–00184–1)	24.00	Oct. 1, 2002
47 Parts:			
0–19	(869–048–00185–9)	57.00	Oct. 1, 2002
20–39	(869–048–00186–7)	45.00	Oct. 1, 2002
40–69	(869–048–00187–5)	36.00	Oct. 1, 2002
70–79	(869–048–00188–3)	58.00	Oct. 1, 2002
80–End	(869–048–00189–1)	57.00	Oct. 1, 2002
48 Chapters:			
1 (Parts 1–51)	(869–048–00190–5)	59.00	Oct. 1, 2002
1 (Parts 52–99)	(869–048–00191–3)	47.00	Oct. 1, 2002
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49 Parts:			
1–99	(869–048–00197–2)	56.00	Oct. 1, 2002
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400–999	(869–048–00201–4)	61.00	Oct. 1, 2002
1000–1199	(869–048–00202–2)	25.00	Oct. 1, 2002

Title	Stock Number	Price	Revision Date
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50 Parts:			
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200–599	(869–048–00206–5)	38.00	Oct. 1, 2002
*600–End	(869–048–00207–3)	58.00	Oct. 1, 2002
CFR Index and Findings Aids	(869–048–00047–0)	59.00	Jan. 1, 2002
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Subscription (mailed as issued)		298.00	2000
Individual copies		2.00	2000
Complete set (one-time mailing)		290.00	2000
Complete set (one-time mailing)		247.00	1999

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 2001, through January 1, 2002. The CFR volume issued as of January 1, 2001 should be retained.

[5] No amendments to this volume were promulgated during the period April 1, 2000, through April 1, 2001. The CFR volume issued as of April 1, 2000 should be retained.

[6] No amendments to this volume were promulgated during the period April 1, 2001, through April 1, 2002. The CFR volume issued as of April 1, 2001 should be retained.

[7] No amendments to this volume were promulgated during the period July 1, 2000, through July 1, 2001. The CFR volume issued as of July 1, 2000 should be retained.

[8] No amendments to this volume were promulgated during the period July 1, 2001, through July 1, 2002. The CFR volume issued as of July 1, 2001 should be retained.

[9] No amendments to this volume were promulgated during the period October 1, 2001, through October 1, 2002. The CFR volume issued as of October 1, 2001 should be retained.